

132 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Questar Overthrust Pipeline Company

Docket Nos. CP10-3-000
CP10-3-001

ORDER ISSUING CERTIFICATE

(Issued August 31, 2010)

1. On October 13, 2009, Questar Overthrust Pipeline Company (Overthrust) filed an application, in Docket No. CP10-3-000, under section 7 of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate the Main Line 133 Loop Expansion Project consisting of approximately 43.3 miles of 36-diameter pipeline which will loop a portion of Overthrust's Main Line 116 (Loop Expansion Project), in Sweetwater and Uinta Counties, Wyoming. On March 12, 2010, Overthrust filed an amendment to its application, in Docket No. CP10-3-001, to modify the route of its proposed pipeline in order to address the concerns of mining companies with mining operations in the vicinity of the originally proposed route. Overthrust also requests a pre-determination that it may roll in the costs of the Loop Expansion Project in its next rate case.

2. For the reasons discussed below we will grant the requested certificate authority, subject to the conditions of this order. However, as explained below, we are denying Overthrust's request for a pre-determination in support of rolled-in rate treatment for the expansion.

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157 (2010).

I. Background and Proposal

3. Overthrust, a corporation organized and existing under the laws of the state of Utah, is a natural gas company, as defined by section 2(6) of the NGA, providing open-access natural gas transportation service in Wyoming.³ Overthrust owns and operates approximately 212 miles of pipeline extending from the Whitney Canyon producing area in Uinta County in southwest Wyoming to an interconnect with Rockies Express Pipeline LLC (Rockies Express) near Wamsutter, Wyoming. Overthrust also interconnects with Wyoming Interstate Company, Ltd. (Wyoming Interstate) and Questar Pipeline Company.

4. Over the last few years, Overthrust has significantly expanded its system. In 2006, the Commission authorized Overthrust to construct and operate a 27.1-mile, 36-inch-diameter pipeline from a location known as Cabin 31,⁴ near Black Fork Plant to Opal, Wyoming.⁵ In 2007, the Commission authorized Overthrust to construct a 77.2-mile, 36-inch-diameter pipeline extension of its existing transmission facilities from Kanda, Wyoming eastward to an interconnect with Rockies Express in Wamsutter, Wyoming.⁶ Most recently, in 2009, the Commission authorized Overthrust to construct and operate additional compression at two sites in Sweetwater, Wyoming in order to increase capacity on its transmission system.⁷

5. In its present application, Overthrust proposes to construct and operate approximately 43.3 miles of 36-inch-diameter pipeline looping and associated facilities on its existing Main Line 116 pipeline, extending westward from Overthrust's existing Rock Springs Compressor Station to Cabin 31, all located within Sweetwater and Uinta Counties, Wyoming. The proposed expansion facilities will create up to 800,000 decatherms (Dth) per day of firm east-to-west transportation capacity on Overthrust's

³ 15 U.S.C. § 717a(6) (2006).

⁴ Cabin 31 is a point of intersection on Overthrust's transmission system where Overthrust's extension to Opal, Wyoming, intersects with Overthrust's mainline transmission system.

⁵ *Questar Overthrust Pipeline Co.*, 116 FERC ¶ 61,225 (2006).

⁶ *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007).

⁷ *Questar Overthrust Pipeline Co.*, 128 FERC ¶ 61,129 (2009).

system. Overthrust states that approximately 70 percent of the proposed pipeline will be collocated with existing pipeline, utility or road rights-of-way.

6. On March 12, 2010, Overthrust filed an amendment to its application proposing two route modifications to address concerns raised by mining companies, General Chemical (Soda Ash) Partners (General Chemical), and FMC Corporation (FMC), in the Bureau of Land Management (BLM) right-of-way grant proceeding. The mining companies stated that they were concerned about possible subsidence associated with their mining operations along two sections of the original Loop Expansion Project route. After discussions with the mining companies, BLM, and Commission staff, Overthrust proposed two route modifications, referred to as the General Chemical re-route and the FMC re-route. Overthrust states that, although the General Chemical re-route is approximately 6.4 miles long and the FMC re-route is approximately 8.0 miles long, the overall amended length of the Loop Expansion Project is only approximately 150 feet longer than the originally proposed route. Overthrust asserts that the re-routes do not impact its cost estimate.

7. Overthrust states that from February 29 through June 16, 2008, it conducted an open season for its Loop Expansion Project to transport Rocky Mountain natural gas production from east-end receipt points to downstream west-end delivery points.⁸ As a result of the open season and subsequent contract negotiations, Overthrust states that it entered into three firm transportation agreements with Wyoming Interstate for the transportation of 548,457 Dth per day of natural gas from interconnections with Rockies Express and Wyoming Interstate on the eastern end of Overthrust's system to interconnections with Kern River Gas Transmission Company (Kern River) and the recently-authorized Ruby Pipeline, L.L.C. (Ruby) near Opal, Wyoming on the western end of Overthrust's system. Overthrust states that the firm transportation agreements have 10-year terms and provide Wyoming Interstate with the right to extend the term for a minimum of two years up to an additional 5 years, then year-to-year thereafter.

8. Overthrust also requests a predetermination that it may roll the costs associated with the Loop Expansion Project into its existing rates in its next general rate case. Overthrust estimates that the Loop Expansion Project will cost \$94,288,239. Overthrust states that Wyoming Interstate has agreed to a negotiated fixed reservation rate of \$2.25692 per Dth. Overthrust proposes to charge the current maximum systemwide

⁸ In conjunction with its open season, Overthrust also conducted a solicitation of capacity release (reverse open season) for any shipper currently holding capacity on its system, with an expiration date beyond January 1, 2011, to notify Overthrust if they wanted to permanently release capacity.

reservation rate, \$2.16400 per Dth, to customers contracting for the Loop Expansion Project's unsubscribed capacity.

II. Notice and Interventions

9. Notice of Overthrust's application in Docket No. CP10-3-000 was published in the *Federal Register* on November 2, 2009 (74 Fed. Reg. 56,559). Kern River and Wyoming Interstate filed timely, unopposed motions to intervene.⁹ Notice of Overthrust's amended application in Docket No. CP10-3-001 was published in the *Federal Register* on March 22, 2010 (75 Fed. Reg. 13,526). No protests, motions to intervene in opposition, or adverse comments were filed.

III. Discussion

10. Since the applications pertain to facilities used for the transportation of natural gas in interstate commerce, the proposals are subject to the Commission's jurisdiction and the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁰

A. Certificate Policy Statement

11. The Certificate Policy Statement¹¹ provides guidance as to how we will evaluate proposals for certificating major new construction. The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains 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.

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2010).

¹⁰ 15 U.S.C. §§ 717f(c), (e) (2006).

¹¹ *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).

12. 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 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 the Commission proceed to complete the environmental analysis where other interests are considered.

13. As noted above, the threshold requirement is that the pipeline must be able to financially support the project without relying on subsidization from existing customers. Overthrust proposes to provide service on the Loop Expansion Project under its existing Part 284 Rate Schedule FT. Since none of the costs of the proposed project are included in Overthrust's currently effective rates, accepting Overthrust's proposal to charge these rates as initial rates for service on the Loop Expansion Project will not result in subsidization of that service by existing customers nor be detrimental to any customers' existing service. Further, as discussed below, the Commission is denying Overthrust's request for a predetermination that rolled-in rate treatment will be appropriate for this project. For these reasons, the Commission finds that Overthrust's proposal will not result in subsidization by existing customers and therefore satisfies the Certificate Policy Statement's threshold test.

14. In addition, Overthrust's proposal provides new incremental services that will not replace any firm transportation service on any other existing pipeline, nor has any pipeline company in the area protested the application. Accordingly, we find there will be no adverse impacts on other pipelines or their customers. We also find the proposed facilities have been designed in a manner to minimize impacts on landowners and the environment. The proposed project utilizes existing rights-of-way and areas adjacent to existing rights-of-way over approximately 70 percent of its length, minimizing impacts on landowners and the environment.

15. We conclude that Overthrust's proposal will enable the company to meet expanded market demand and provide greater access to Rocky Mountain gas supplies without adverse impacts on existing customers, other pipelines, landowners, or communities. Therefore, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission finds that approval of the Loop Expansion Project is required by the public convenience and necessity, subject to the conditions discussed below.

B. Rates

16. Overthrust requests a predetermination of rolled-in rate treatment for the costs associated with the Loop Expansion Project. Overthrust states that it has entered into three Rate Schedule FT firm transportation agreements with Wyoming Interstate for up to a total of 548,457 Dth per day, phasing in over time. The firm transportation agreements are for a negotiated fixed reservation rate of \$2.25692 per Dth. For customers that contract for the remaining unsubscribed capacity, Overthrust proposes to charge the current maximum systemwide reservation rate of \$2.16400 per Dth. In support of its request for rolled-in rate treatment, Overthrust states that the revenues for the project exceed the cost of service over the life of the contracts.¹² Overthrust's Exhibit N shows that for each of the first four years of the project, the total cost of service attributable to the Loop Expansion Project would exceed the total revenues based on Overthrust's negotiated rate of \$2.25652 per Dth, due to the fact that service to Wyoming Interstate would be phased in. However, Overthrust's Exhibit N shows that over the first ten years of the project, total revenues based on the negotiated rate would exceed the total cost of service by \$3,565,460.¹³ However, when Overthrust files in the future under section 4 of the NGA¹⁴ to recover the costs associated with the Loop Expansion Project, the project costs will be compared to the revenues that would be generated if Overthrust were charging the current maximum recourse rate for all transportation services under the firm transportation agreements, regardless of whether the contracted rates for the service are less than or greater than the recourse rate. Therefore, it is appropriate to make that same comparison here in order to determine whether a presumption of rolled-in rate treatment should be granted with respect to a future section 4 rate proceeding.¹⁵

17. As reflected in Overthrust's revised Exhibit N submitted on December 23, 2009, when the maximum recourse rate of \$2.16400 per Dth is substituted for the negotiated rate that Overthrust has agreed to charge Wyoming Interstate, not only does the cost of service exceed total revenues for each of the first four years of service, the total cost of service exceeds total revenues for the first ten years of the project by \$2,177,223. In addition, at present, only approximately 69 percent of the total expansion capacity has

¹² Each Rate Schedule FT transmission service agreement with Wyoming Interstate is for a term of ten years.

¹³ See Overthrust's Application, Exhibit N, page 2 of 2.

¹⁴ 15 U.S.C. § 717c (2006).

¹⁵ See *Trunkline Gas Co., LLC.*, 119 FERC ¶ 61,078, at P 23 (2007) (*Trunkline*); *Southern Natural Gas Co.*, 113 FERC ¶ 61,199, at n.20 (2005).

been subscribed, by Wyoming Interstate. Under these circumstances, we cannot grant a presumption that rolling the costs associated with the Loop Expansion Project into Overthrust's system rates in a future rate case would not result in existing customers subsidizing the new construction. Therefore, we deny Overthrust's request for pre-approval of rolled-in rate treatment for these facilities. Our finding here does not preclude Overthrust from demonstrating in a rate case that the facility costs can be rolled into systemwide rates without subsidization by existing customers. However, Overthrust will bear the burden of proof of demonstrating that rolled-in rate treatment is justified.

18. Although we are denying the request for a presumption of rolled-in rate treatment for the expansion, we will authorize Overthrust to use its existing Part 284 maximum FT rate as the initial recourse rate for services using the incremental capacity created by the Loop Expansion Project. This is consistent with the Commission's policy of requiring a pipeline to use its existing maximum applicable Part 284 rate as the initial recourse rate if the calculated incremental rate is less than the Part 284 rate.¹⁶ Here, calculation of an incremental recourse rate for the project results in a rate of \$1.69 per Dth, which is less than Overthrust's maximum FT reservation rate of \$2.164 per Dth.¹⁷

19. Overthrust estimates in its January 8, 2010 response to a Commission staff data request that the Loop Expansion Project and delivery of Wyoming Interstate's contracted volumes will reduce its fuel factor from 0.849 percent to 0.64 percent. Based upon these representations we will authorize Overthrust to charge its system fuel rate for service on the expansion facilities.

C. Accounting

20. Overthrust proposes to capitalize a total allowance for funds used during Construction (AFUDC) of \$4,575,065 as part of the Loop Expansion Project. Consistent with the Commission's revised policy on the commencement of AFUDC as described in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*, we will allow Overthrust's proposed AFUDC accruals, subject to Overthrust filing a representation that the proposed AFUDC accruals comply with the revised policy

¹⁶ *Trunkline*, 119 FERC ¶ 61,078 at P 24.

¹⁷ Using the facilities' potential maximum capacity of 800,000 Dth per day, we have calculated the resultant incremental rate as follows: cost of service of \$16,220,702 / [800,000 Dth/d × 12] = \$1.6896/Dth.

conditions.¹⁸ Furthermore, if Overthrust determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it must revise all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. Overthrust 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.

D. Environmental

21. Commission staff began environmental review of the Loop Expansion Project following the grant of approval for Overthrust to use the pre-filing process on January 29, 2009, in Docket No. PF09-6-000. As part of the pre-filing review, Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Loop Expansion Project and Request for Comments on Environmental Issues* (NOI) on April 10, 2009. An amended NOI was issued on March 30, 2010, following Overthrust's amendment application in Docket No. CP10-3-001. The NOIs were published in the *Federal Register*¹⁹ and mailed to over 140 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

22. We received scoping comment letters identifying environmental concerns from the U.S. Department of the Interior's Fish and Wildlife Service (FWS), BLM, Wyoming Game and Fish Department (Wyoming Game and Fish), Wyoming Department of Agriculture (Wyoming Agriculture), and the Wyoming State Geological Survey (Wyoming Geological Survey). The primary issues raised were impacts on threatened, endangered, and candidate species; migratory birds; terrestrial and aquatic species; livestock use; cultural resources; vegetation; and geologic resources in the project area. We also received letters from Overthrust and the BLM regarding the General Chemical and FMC's active mining operations along the pipeline route and route variations.

¹⁸ See *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (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.

¹⁹ 74 Fed. Reg. 17,849 (2009) and 75 Fed. Reg. 18,196 (2010).

23. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),²⁰ Commission staff prepared an EA for the Loop Expansion Project. The BLM High Desert District (including the Rock Springs and Kemmerer Field Offices) participated in the preparation of the EA as a cooperating agency. The EA addresses geology and soils, water resources, fisheries and wetlands, vegetation and wildlife, land use, recreation and visual resources, socioeconomics, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. As summarized below, the EA also addresses all substantive issues raised during the scoping period.

24. FWS and BLM provided scoping comments on federally-listed threatened, endangered, and candidate species; migratory birds; and sensitive species. Wyoming Game and Fish provided comments regarding potential impact on big game species, the midget faded rattlesnake, and the sage grouse core foraging areas. The EA discusses each of the species that could potentially be affected by the project and concludes that Overthrust's anticipated construction period and proposed mitigation would minimize impact on species considered sensitive by BLM and Wyoming Game and Fish; however, the project is likely to adversely affect the endangered Colorado River fish as a result of water depletion for hydrostatic test water and dust suppression withdrawals. The EA also concludes that the project impact on sagebrush habitat would not significantly effect sage grouse populations.

25. BLM, Wyoming Agriculture, and Wyoming Game and Fish encourage minimizing and/or avoiding potential impact on riparian habitats along the proposed route and are concerned about revegetation following construction of the project. Wyoming Game and Fish and Wyoming Agriculture are also concerned about the spread of noxious weeds as a result of the project. In addition, Wyoming Game and Fish is concerned about the project's impact on fish species in the perennial waterbodies crossed by the proposed pipeline. As stated in the EA, Overthrust will avoid any impact on fish species and riparian habitat by utilizing horizontal directional drilling (HDD) to cross the perennial waterbodies along the pipeline route. The EA discusses Overthrust's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan). With regard to revegetation along the pipeline route, Overthrust proposes to use seed mixes recommended by local or federal resource agencies to increase the likelihood of successful revegetation and expedite the revegetation process in an arid climate. The EA concludes that in most cases, Overthrust's proposal to collocate its pipeline with existing pipeline, utility, and road rights-of-way, the proposed mitigation measures, and its

²⁰ 42 U.S.C. §§ 4321-4370f (2006).

adherence to its Plan will reduce impacts on non-disturbed vegetation and the spread of noxious weeds. In addition, Commission staff recommends Overthrust locate the proposed pipeline no more than 25 feet from its existing pipeline, instead of 40 feet, unless otherwise justified, to further reduce impacts on non-disturbed vegetation along the pipeline route.

26. BLM also provided scoping comments on cultural resources, sensitive plants, and livestock use. The EA evaluates cultural survey reports completed for the project and indicates that Overthrust committed to implement the measures recommended in the survey reports. To ensure that cultural resources are adequately protected, the EA includes a recommendation that prior to construction, Overthrust file with the Secretary comments on the survey reports, and any additional comments on survey reports completed on any newly identified areas of potential effect, filed by the BLM Rock Springs Field Office and the Wyoming State Historic Preservation Office.

27. The EA also discusses the survey results conducted for special status plant species in the project area, in accordance with BLM protocols and Overthrust's commitment to complete surveys prior to construction, along the two reroutes included in Overthrust's amendment application. The EA addresses potential impact on livestock use by indicating that Overthrust would implement measures described in its Plan and includes Overthrust's mitigation measures to minimize potential impact on grazing land.

28. BLM and the Wyoming Geological Survey provided scoping comments concerning potential geological resource impact such as landslides, active faults, and shrinking swelling soils. The EA evaluates the geological resources in the project area and the measures that Overthrust proposes to implement to minimize geology-related impact. The EA concludes that the two reroutes Overthrust incorporated into its proposal address the adverse impact on the active mining operations along the originally-proposed route, thus avoiding or minimizing impact on geological resources.

29. Wyoming Game and Fish also provided scoping comments and recommendations for hydrostatic test water discharge locations, water flow, and erosion control devices to be implemented during construction of the project. Overthrust has committed to implement its *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), which includes measures to minimize erosion and sedimentation from the hydrostatic test water discharge (i.e., regulating discharge rates, using energy dissipation devices, and installing sediment barriers). Overthrust's hydrostatic water intake and discharge processes are summarized in the EA and Commission staff concludes that with implementation of Overthrust's Procedures, the project will not result in any significant erosion and sedimentation associated with hydrostatic test water discharges.

30. In its scoping comment letter, the Wyoming Game and Fish recommends Overthrust segregate the upper one foot of stream bed material and replace the layers in the same order as they were removed when constructing through intermittent streams that are dry during construction. The EA analyzes Overthrust's proposed construction procedures through intermittent streams and clarifies that Overthrust plans to segregate topsoil along the entire right-of-way, including dry intermittent waterbodies, and will also implement other mitigation measures when crossing streams, whether or not they are dry at the time of construction, but Overthrust does not specifically address how it would handle the upper one foot of topsoil. We find Overthrust's construction procedures acceptable. We note, however, that the Wyoming Department of Environmental Quality (Wyoming DEQ) could require Overthrust to segregate the upper one foot of stream bed material with a stipulation in its stream crossing permit issued in accordance with section 401 of the Clean Water Act.²¹

31. Wyoming Game and Fish also expressed concern that a portion of the pipeline route at the White Mountain crossing would create a new corridor and recommended that an alternate route be incorporated to follow existing utility corridors to the extent possible. The EA discusses the proposed route through White Mountain and found that the majority of the route is collocated with existing rights-of-way, and thereby avoids impact associated with a new corridor. The EA concludes that no additional route alternative was identified that offered an environmental advantage over the proposed pipeline route and therefore Commission staff does not recommend an alternative White Mountain crossing route.

32. On June 25, 2010, the EA was placed into the public record of this proceeding²² and issued for a 30-day comment period. In response, we received comments from the Wyoming Geological Survey, U.S. Geological Survey (USGS), and Wyoming Game and Fish. The Wyoming Geological Survey did not provide any substantive comments on EA. The Wyoming Game and Fish filed comments on the EA revisiting matters previously raised. Substantive comments received in response to the EA are addressed below.

33. In its EA comments, the USGS indicates that the EA did not provide references for certain statements of fact regarding aquifers in the project area. We note here that the source of the statements regarding regional aquifer systems can be found on the USGS

²¹ 33 U.S.C. § 1341 (2006).

²² A notice announcing the availability of the EA was published on July 6, 2010, in the *Federal Register*, 75 Fed. Reg. 38,808 (2010).

Publications Warehouse website²³ and the source of the statements regarding water resources in Sweetwater County and the project area can be found on the USGS Publications Warehouse website²⁴ and the U.S. Environmental Protection Agency's website.²⁵

34. The Wyoming Game and Fish identified the spread of aquatic invasive species (e.g., quagga and zebra mussels) as a concern during construction of the project. According to Wyoming State Parks, Historic Sites, and Trails²⁶ no quagga or zebra mussels have been identified in Wyoming to date. As stated in the EA, Overthrust would cross all perennial waterbodies by the HDD method, thereby minimizing any equipment contact with water where these mussels could be located. Further, Overthrust has committed to ensuring that all equipment that arrives on the project site would be clean (which would include removal of any aquatic invasive species). The EA notes that hydrostatic test water pumps and hoses would withdraw water from the perennial waterbodies; however, Overthrust must obtain a National Pollution Discharge Elimination System (NPDES) permit from Wyoming DEQ, which could include additional stipulations to address the spread of aquatic invasive species.

35. Wyoming Game and Fish's reiterated its scoping concerns regarding hydrostatic test water discharge locations, water flow, and erosion control devices to be implemented during construction of the project. As discussed above, the EA describes Overthrust's construction methods and protective measures and concludes that the project would not cause significant erosion and sedimentation associated with hydrostatic test water discharges. Further, Overthrust must obtain an NPDES permit from the Wyoming DEQ, which could include additional restrictions on discharge locations, flow, and ECDs.

²³ U.S.G.S., *Ground Water Atlas of the United States, HA 730-I Regional Aquifer Systems*, available at http://pubs.usgs.gov/ha/ha730/ch_i/I-text2.html.

²⁴ Jon P. Mason and Kirk A. Miller, *Water Resources of Sweetwater County, Wyoming*, available at <http://pubs.usgs.gov/sir/2004/5214>.

²⁵ U.S.E.P.A., *Region 8 Sole Source Aquifer Program*, available at <http://www.epa.gov/region8/water/solesource.html>.

²⁶ Wyoming State Parks, Historic Sites, and Trails, *State Park Boaters Should Expect AIS Inspections*, available at <http://wyoparks.state.wy.us/Press/release.asp?releaseID=430>.

36. In a letter dated July 29, 2010, the FWS responded to Commission staff's June 30, 2010 request for formal consultation regarding the Colorado River fish species. FWS determined that the Loop Expansion Project would avoid the likelihood of jeopardy to the endangered fishes and avoid destruction or adverse modification of their crucial habitat by withdrawing less than 100-acre feet of water from the Upper Colorado River Basin. This concludes consultation with the FWS; therefore, there is no need to include the EA's recommendation 12, regarding consultation with FWS, as a condition in this order.

37. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Overthrust's application, as amended and supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

38. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of these certificates. 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.²⁷

IV. Conclusion

39. For all of the reasons discussed above, the Commission concludes that the Loop Expansion Project is required by the public convenience and necessity and authorizes Overthrust to undertake the construction and operation of the project facilities, subject to the discussion herein, environmental conditions set forth in the Appendix, and the ordering paragraphs to this order.

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

²⁷ 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).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Overthrust authorizing it to construct and operate its Loop Expansion Project, as described and conditioned herein, and as more fully described in the application and amendment.

(B) The certificate authorities issued in Ordering Paragraph (A) are conditioned, as discussed in this order, and on the following:

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

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

(D) Overthrust's request for a predetermination of rolled-in rate treatment is denied without prejudice to Overthrust's demonstrating, in a future NGA section 4 filing, that such rate treatment will not result in subsidization of the expansion capacity by existing shippers.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA) and otherwise amended herein, this authorization includes the following conditions:

1. Questar Overthrust Pipeline Company (Overthrust) 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. Overthrust must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has 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**, Overthrust shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility modifications described in sections B.5.1 and B.6 of the EA. **As soon as they are available, and before the start of construction**, Overthrust shall file with the

Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for additional modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by Overthrust's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/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 the Certificate and before construction begins,** Overthrust shall file an Implementation Plan with the Secretary for review

and written approval by the Director of OEP. Overthrust must file revisions to the plan as schedules change. The plan shall identify:

- a. how Overthrust 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 Overthrust will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Overthrust 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 sessions;
 - f. the company personnel (if known) and specific portion of Overthrust's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Overthrust will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance 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, Overthrust shall file updated status reports with the Secretary on a **biweekly 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 Overthrust'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 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 EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of 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 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 Overthrust from other federal, state, or local permitting agencies concerning instances of noncompliance, and Overthrust's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Overthrust shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. Overthrust must receive written authorization from the Director of OEP **before placing the project into service**. 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**, Overthrust shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Overthrust has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Overthrust shall locate the loop line no more than 25 feet from the existing Overthrust pipeline where the authorized loop is adjacent to the existing Overthrust Mainline 116, unless it provides site-specific justification for additional separation by milepost. Requests for additional pipeline separation distance shall be filed for the review and written approval of the Director of OEP.

12. Overthrust is only authorized to use those temporary extra workspaces identified as “Approved for Use” in appendix D (table D-1) of the EA. Requests for additional temporary workspaces shall be filed for the review and written approval of the Director of OEP.
13. Overthrust **shall not begin construction** of facilities and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Overthrust files with the Secretary:
 - (1) the Wyoming State Historic Preservation Office’s (SHPO) and Bureau of Land Management (BLM) Rock Springs Field Office’s comments on the cultural resources survey reports;
 - (2) any comments from the BLM Kemmerer Field Office on the geotechnical bore hole survey report; and
 - (3) a survey report for any newly identified areas, and the SHPO’s and BLM’s (as appropriate) comments on the report.
 - b. the FERC staff reviews and the Director of OEP approves the cultural resources reports, and notifies Overthrust in writing that construction may proceed.

All material filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.”**