144 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tallgrass Interstate Gas Transmission, LLC Docket No. CP12-495-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued September 12, 2013)

1. On August 6, 2012, Kinder Morgan Interstate Gas Transmission LLC (KMIGT), which has since changed its name to Tallgrass Interstate Gas Transmission, LLC (Tallgrass or Applicant),[1] filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)[2] and Part 157 of the Commission's regulations. Tallgrass requests authorization to: (1) abandon certain mainline natural gas pipeline facilities and the natural gas service therefrom by transfer to an affiliate, Tallgrass Pony Express Pipeline, LLC (Tallgrass Pony Express), formerly known as Kinder Morgan Pony Express Pipeline LLC, for the purpose of converting the facilities into crude oil pipeline facilities; and (2) construct and operate certain replacement facilities necessary to continue service to existing natural gas firm transportation customers following the proposed abandonment. The project is referred to as the Pony Express Pipeline Conversion Project. As discussed below, the Commission grants the requested authorizations, subject to conditions.

[1] Tallgrass is a limited liability company wholly owned by Tallgrass Operations, LLC. Tallgrass Operations, LLC is a limited liability company wholly owned by Tallgrass Energy Partners, LP. On November 13, 2012, Tallgrass Energy Partners, LP acquired KMIGT from Kinder Morgan Energy Partners, L.P. and changed its name to Tallgrass Interstate Gas Transmission, LLC. *See* Supplement to Application, filed December 17, 2012. Unless otherwise noted, all references herein to Tallgrass include KMIGT.

[2] 15 U.S.C. §§ 717f (b) and (c), respectively (2012).

I. Background and Proposals

A. Background

2. Tallgrass is a natural gas company, as defined in the NGA, engaged in the transportation, exchange, and storage of natural gas. Tallgrass operates in the States of Colorado, Kansas, Missouri, Nebraska and Wyoming. Tallgrass' system is currently connected to supplies of natural gas from the Hugoton, Bradshaw and Unruh areas in Kansas; the Denver-Julesburg Basin in Colorado, Kansas and Nebraska; the Wind River and Powder River Basins in Wyoming; and to various interstate and intrastate pipelines in Colorado, Kansas, Missouri, Nebraska and Wyoming. Tallgrass owns and operates one underground storage reservoir in Nebraska, the Huntsman Storage Facility. Tallgrass transports gas through its jurisdictional interstate pipeline on an open-access basis to the various delivery points along its system pursuant to jurisdictional transportation rate schedules and general terms and conditions authorized in its FERC NGA Gas Tariff.

3. On May 30, 1997, the Commission authorized Tallgrass' predecessor to acquire and convert to natural gas transportation service approximately 804 miles of an existing crude oil pipeline and to construct and operate related facilities known as the Pony Express Pipeline located in Wyoming, Colorado, Nebraska, Kansas and Missouri.[3] The Pony Express Pipeline currently has a delivery capacity of up to 260,000 dekatherms (Dth)/day of natural gas and provides west to east transportation from gas production basins in Wyoming and Colorado to markets in Kansas City, Missouri, and to interconnects with other interstate pipelines in the mid-continent region. Tallgrass states that the Pony Express Pipeline's current firm average daily throughput is approximately 100,000 Dth/day of natural gas and that long-term firm transportation needs are approximately 104,000 Dth/day.[4]

4. Tallgrass states that the market for gas transportation on the Pony Express Pipeline is in decline due to emerging shale supplies in the East and new pipeline takeaway capacity out of the Rocky Mountains. At the same time, Tallgrass asserts, the demand for oil transportation to move emerging oil supplies in the Bakken Formation within the Williston Basin in Montana, North Dakota, and the Province of Saskatchewan is growing. Therefore, Tallgrass filed its application in this proceeding proposing to abandon a segment of the Pony Express mainline by sale to Tallgrass Pony Express. Tallgrass Pony Express, in turn, will re-convert that portion of the mainline back to oil transmission facilities. Tallgrass proposes to construct natural gas replacement facilities

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[3] *KN Interstate Gas Transmission Co.*, 79 FERC ¶ 61,268 (1997).

[4] *See* Application at 17.

necessary for continuing its existing natural gas transportation services. Tallgrass claims that the Pony Express Pipeline is ideally situated to meet the growing need for oil transportation while mitigating the need to build new "green field" infrastructure. Tallgrass further states that the proposed re-conversion of the Pony Express Pipeline facilities to a crude oil line will allow the currently underused facilities to be employed in their most productive use while customers' demand for natural gas service continues to be met. In concurrent filings, Tallgrass Pony Express filed requests for a declaratory order approving proposed rate structures, services, and prorationing terms applicable to joint and local transportation to be offered via the new crude oil pipeline. The Commission granted these requests.[5]

B. Proposals

5. Pursuant to NGA section 7(b), Tallgrass proposes to abandon approximately 432.4 miles of mainline pipeline facilities and the natural gas service therefrom by transfer to its affiliate Tallgrass Pony Express, for the purpose of re-converting the facilities into crude oil pipeline facilities. Tallgrass also seeks authorization pursuant to NGA section 7(c) to construct certain replacement-type facilities, including compression, pipeline segments and interconnects, and has entered or will enter into transportation agreements with four other natural gas pipelines[6] in order to maintain service for long-term natural gas customer needs of approximately 104,000 Dth/day. Tallgrass asserts it will be able to continue service to 100 percent of its current firm contract demand customers who wish to continue receiving such service. In addition, Tallgrass states that it will be reimbursed by Tallgrass Pony Express for all of its costs attributable to replicating the services to Tallgrass' firm shippers.

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[5] *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180 (2012) and *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249 (2012). Kinder Morgan Pony Express Pipeline LLC changed its name to Tallgrass Pony Express Pipeline, LLC. Tallgrass Pony Express intends to construct new facilities to extend the pipeline segment to the Cushing Refinery in Oklahoma.

[6] Natural Gas Pipeline Company of America LLC (NGPL), Southern Star Central Gas Pipeline, Inc. (SSC), Trailblazer Pipeline Company LLC (Trailblazer), and Wyoming Interstate Company, Ltd. (WIC). In its April 4, 2013 response to Commission staff's data request, Tallgrass states that it no longer intends to contract for capacity on SSC, because the affected firm shipper has elected to contract directly with SSC for capacity.

6. Specifically, Tallgrass proposes to abandon in place a 432.4-mile pipeline segment on its Pony Express Pipeline system from the discharge side of the existing Guernsey Compressor Station located in Platte County, Wyoming to the interconnect with NGPL located in Lincoln County, Kansas. In addition, Tallgrass proposes to abandon and remove three natural gas compressor stations totaling 33,175 horsepower (hp), four meter stations, taps and certain ancillary facilities on the Pony Express Pipeline system. The legal descriptions of the facilities to be abandoned are included in Tallgrass' application.[7]

7. Tallgrass states that after the abandonment, although its customers have alternative transportation options available, it will continue to provide gas service to its existing 19 firm customers who receive service over the Pony Express Pipeline system.[8] Tallgrass states that its pipeline upstream and downstream of the pipeline segment to be abandoned will remain as a fully functional natural gas transmission system. However, Tallgrass will need to construct certain new replacement facilities. Specifically, Tallgrass seeks authorization to construct: (1) one new mainline compressor station referred to as the Tescott Compressor Station totaling 14,200 hp; (2) two lateral pipelines which will be approximately three miles and 22 miles in length; (3) two booster compressor units; and (4) certain auxiliary facilities. In addition, Tallgrass seeks approval to construct, convert, or modify seven interconnecting meter stations and related pipe to enable deliveries into and/or receipts from the interstate pipeline systems of NGPL, Northern Natural Gas Company (Northern Natural), SSC,[9] Trailblazer, and WIC.[10] In order to continue service to existing firm shippers, Tallgrass states it will contract for firm transportation with other downstream interstate pipelines.[11]

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[7] *See* Application at 8-9.

[8] The 19 existing firm service contracts are identified in Exh. Z-1 of the Application.

[9] Although Tallgrass no longer intends to contract for capacity on SSC, Tallgrass states that it will still need to construct new interconnect facilities with SSC. *See* Tallgrass' April 4, 2013 response to staff data request at 2.

[10] *See* Application at 10-11 and Supplement to Application, filed December 17, 2012, at 5-6, for the legal descriptions of the replacement facilities.

[11] Section 39 of Tallgrass' FERC NGA Gas Tariff authorizes Tallgrass to acquire capacity on other interstate pipelines for its system operational needs and/or to render service to its customers. Tallgrass states that it has entered into agreements with Trailblazer and NGPL and is in discussions with WIC to provide long-term transportation

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8. Tallgrass further states that the proposed abandonment of the Pony Express pipeline segment will not result in any adverse effect on existing firm service shippers and will provide substantially similar natural gas service options. Tallgrass asserts that Tallgrass Pony Express will reimburse Tallgrass for the costs associated with the costs of abandoning the facilities, estimated to be $8.4 million, and construction of the new facilities, estimated to be $57.2 million. In addition, Tallgrass Pony Express will reimburse Tallgrass for the transportation charges on the other pipelines, estimated to be $9.3 million annually.[12]

II. Procedural Matters

A. Notice and Interventions

9. Notice of the application was published in the *Federal Register* on August 22, 2012 (77 Fed. Reg. 50,682). Timely unopposed motions to intervene, listed in Appendix A, are granted by operation of Rule 214 of the Commission's regulations.[13] Anadarko Energy Services Company, WY-MT Land Stewardship, LLC, and Eastern Montana Landowners Group LLC (WY-MT) filed late motions to intervene. On September 11, 2013, WY-MT filed a notice of withdrawal of their pleadings. We will grant the unopposed, untimely motions to intervene, because they will not unduly delay, disrupt, or otherwise prejudice this proceeding or other parties.[14] We will also grant WY-MT's motion to withdraw their pleadings.

B. Protests and Answers

10. In addition to their motions to intervene, the following parties filed protests or comments in opposition: the Kansas Corporation Commission (KCC); Nebraska Corn Processing LLC, Prairie Horizon Agri-Energy LLC, Trenton Agri Products LLC (collectively, the Ethanol Producers); Public Service Company of Colorado (PSCo);

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on Tallgrass' behalf to meet Tallgrass' firm transportation obligations to affected shippers. Application at 4.

[12] Tallgrass estimates that the cost of the replacement facilities will be $57,257,200. *See* Supplement to Application, Revised Exh. K, filed December 17, 2012. The estimated annual cost of replacement capacity on third-party pipelines will be $9,324,081. *See* Application, Exh. Z-2 at 12.

[13] 18 C.F.R. § 385.214(c) (2013).

[14] 18 C.F.R. § 385.214(d) (2013).

Sterling Energy Investments LLC (Sterling); Tenaska Marketing Ventures (Tenaska); and Wyoming Pipeline Authority (WPA). On September 20, 2012, Tallgrass filed a motion for leave to answer the protests. Sterling filed a motion for leave to answer Tallgrass' answer on October 12, 2012, and Tallgrass filed another motion for leave to answer Sterling on October 24, 2012. On April 10, 2013, Sterling filed a motion to withdraw its September 5, 2012 Motion for Leave to Intervene and its October 12, 2012 Motion for Leave to Answer and Answer, stating that it resolved any differences it may have had with Tallgrass. On April 22, 2013, the Ethanol Producers filed a motion for leave to supplement their protest, and Tallgrass responded on April 26, 2013. On August 22, 2013, the Ethanol Producers filed a notice of withdrawal of pleadings, stating that they have resolved their issues with Tallgrass and now support issuance of the requested certificate. On August 30, 2013, Tenaska filed a letter stating that it has not reached any agreement with Tallgrass concerning the cancellation or modification of Tenaska's existing firm transportation contract. Sterling's and the Ethanol Producers' motions to withdraw their pleadings are granted. The other protests and comments are discussed below.

C. Requests for Evidentiary Hearing and Technical Conference

11. KCC asserts that the Commission should set this proceeding for a hearing to be conducted simultaneously under NGA sections 5 and 7 because of unresolved issues regarding the rate treatment to be accorded the original cost of the Pony Express Pipeline facilities. KCC argues that the Commission cannot approve abandonment of the facilities without considering the rate implications. In addition, KCC requests an evidentiary hearing to consider Tallgrass Pony Express' creditworthiness and the adequacy of its reimbursement commitment.

12. An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.[15] KCC has not raised a material issue of fact that the Commission cannot resolve on the basis of the written record. As demonstrated by the discussion below, the existing written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form.[16] Accordingly, the Commission will deny KCC's request for an evidentiary hearing.

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[15] *See, e.g., Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012); *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988).

[16] *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

III. Discussion

13. The Pony Express Pipeline facilities are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission. Accordingly, the proposed abandonment of a segment of the pipeline is subject to the requirements of NGA section 7(b).[17] As discussed below, we grant Tallgrass' application for abandonment of the subject facilities (Pony Express Pipeline segment) by transfer to its affiliate Tallgrass Pony Express Pipeline LLC.

14. Tallgrass also seeks to construct and operate certain replacement facilities in order to continue natural gas transportation service to its existing firm shippers following the proposed abandonment; therefore, the proposal is subject to the requirements of NGA sections 7(c) and (e).[18] As discussed below, we grant the application for certificate authorization for Tallgrass to construct and operate the replacement facilities.

A. Abandonment of Pony Express Pipeline Segment

15. Section 7(b) allows a natural gas pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience or necessity." The courts have explained that, in considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.[19] This does not mean, however, that abandonment is not permitted if there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment proposals against the benefits to the market as a whole.[20]

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[17] 15 U.S.C. § 717f (b) (2012).

[18] 15 U.S.C. § 717f (c) and (e), respectively (2012).

[19] *See Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

[20] *See Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643 (D.C. Cir. 1987) ("We agree with the FERC that the 'public convenience or necessity' language of the NGA's

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16. When a pipeline company proposes to abandon facilities that will reduce the amount of service that it is able to provide, continuity and stability of existing services are the primary considerations in assessing whether the public convenience and necessity permit an abandonment that will take the subject facilities and the capacity represented by those facilities permanently out of service. If the Commission finds that a pipeline's proposed abandonment of particular facilities will not jeopardize continuity of existing natural gas transportation services, it will defer to the pipeline's own business judgment.[21]

17. Tallgrass maintains it will continue to provide natural gas transportation service to its existing firm shippers after abandonment of the Pony Express Pipeline segment and that the abandonment of the facilities will not adversely affect its existing customers. Tallgrass proposes to continue gas service by constructing and operating certain replacement-type facilities and by contracting for firm transportation capacity with interconnected and other downstream interstate pipelines.[22] In addition, Tallgrass maintains that existing customers will not pay any costs incurred by Tallgrass to replace the abandoned capacity through newly constructed facilities and transportation arrangements on other pipelines, because Tallgrass Pony Express will reimburse Tallgrass for those costs.

18. Tallgrass also asserts that its proposal to abandon the Pony Express Pipeline segment is required by the public convenience and necessity in light of the declining market need for natural gas transportation on the Pony Express Pipeline, whereas there is an increasing demand for crude oil transportation. Tallgrass claims that the demand for firm gas transportation on the Pony Express Pipeline has declined 55 percent between 2008 and 2012.[23] At the same time, there has been a dramatic increase in oil production

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abandonment provision envisions agency policy-making to fit the regulatory climate.") (citation omitted).

[21] *See, e.g, Transwestern Pipeline Co.*, 140 FERC ¶ 61,147, at P 14 (2012) (continuity of gas service was assured by proposal to relocate existing receipt and delivery points to adjacent parallel pipeline); *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001) (continuity of gas service for existing customers was assured by proposal to relocate existing receipt and delivery taps to remaining parallel gas pipelines).

[22] Tallgrass states that it has entered into agreements with Trailblazer and NGPL and is in discussions with WIC to provide service on behalf of Tallgrass. *See* Application at 4.

[23] *See* Application at 17.

in the Bakken Formation and a corresponding need for take-away capacity.[24] Tallgrass maintains that the conversion of the Pony Express Pipeline segment will avoid the need to build new pipeline facilities for crude oil transportation and unnecessary environmental impact.

1. <u>Continuity of Service</u>

19. KCC and Tenaska express concerns regarding continuity and stability of gas service for existing shippers after abandonment of the Pony Express Pipeline segment. Tenaska claims that Tallgrass' proposed replacement service using contracts in Tallgrass' name with upstream pipelines will not be comparable to the service that is currently provided on the Pony Express Pipeline. Tenaska requests that the Commission condition any approval of Tallgrass' application on the requirement that affected firm shippers have the unilateral right either: (1) to terminate their existing contracts without exit fee or further liability or (2) to continue service under new terms acceptable to the shipper.[25] KCC states that it does not oppose the proposed conversion of the Pony Express Pipeline segment to oil pipeline transportation, but questions the adequacy of Tallgrass' one-year firm transportation agreement with Trailblazer to provide replacement service.[26]

20. In its September 20, 2012 answer to the protests, Tallgrass states that Commission policy allows pipelines to meet their service obligations to customers by acquiring capacity on other pipelines, either by lease or under a Part 284 service agreement with the other pipeline.[27] In addition, Tallgrass states that its tariff provides that Tallgrass may enter into transportation agreements with other pipelines and use such capacity to render

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[24] *Id.* at 15-16.

[25] Tenaska's concern that it will be required to change its primary delivery point at the NGPL/Lincoln interconnect was addressed by Tallgrass' commitment to retain that delivery point on its system. *See* September 20, 2012 Answer to Protests at 14-15. However, in its August 30, 2013 letter, Tenaska informed the Commission that Tallgrass has not resolved Tenaska's contract concerns regarding access to specific receipt and delivery points.

[26] *See* September 5, 2012 Notice of Intervention and Protest (citing Application, Exh. U, Trailblazer Pipeline Company LLC Contract No. 946413).

[27] *See* September 20, 2012 Answer to Protests at 12 (citing *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139, *clarification and reh'g denied*, 95 FERC ¶ 61,056 (2001)).

services to its customers.[28] Tallgrass argues that under these types of "Account 858" arrangements,[29] shippers' contractual rights, including ROFR rights, are unaffected, because the pipeline that acquires capacity in a second pipeline system uses the acquired capacity to provide service under its own tariff. Thus, the second pipeline's tariff does not control service to a shipper on the pipeline that acquired the capacity, and shippers on the capacity-acquiring pipeline do not need to deal with multiple pipelines or multiple tariffs.[30] Tallgrass also asserts that there is no reason why service on another pipeline is inherently more risky than service on Tallgrass, nor is there any evidence to support this claim.[31] Moreover, Tallgrass explains that because its transportation agreement with Trailblazer is for one year, Tallgrass is eligible under Trailblazer's tariff for ROFR rights.[32]

21. The relevant criterion for the public interest is the pipeline's ability to meet anticipated requests for firm service after the abandonment becomes effective.[33] Tallgrass has demonstrated that firm service demand for capacity on the Pony Express Pipeline has markedly declined and that all of the capacity on the Pony Express Pipeline associated with the segment proposed for abandonment is no longer essential to maintain gas service to current or anticipated firm gas customers. No party disputes these facts. Although the protestors object to or have concerns with the abandonment of service from the Pony Express segment and the use of replacement service on upstream pipelines, they have not shown that any existing firm shippers will be denied service or that the quality of the replacement service will be inferior.

22. The Commission has analyzed Tallgrass' proposed pipeline modifications and concludes that Tallgrass will be able to accommodate the delivery requirements of its existing shippers. For shippers served by the proposed Tescott Compressor Station, up to 200,000 Dth/d of capacity will be available to points downstream of the NGPL/ Lincoln

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[28] *See* section 39.1 of Tallgrass' FERC NGA Gas Tariff.

[29] Account No. 858, **Transmission and compression of gas by others**, includes amounts paid to others for the transmission and compression of gas. 18 C.F.R. § 201.858 (2013).

[30] *See* September 20, 2012 Answer to Protests at 13.

[31] *Id.*

[32] *Id.* at 12, n.29.

[33] *See, e.g.*, *Trunkline Gas Co.*, 94 FERC ¶ 61,381 (2001).

interconnect on Segments 800, 850, and 900 of the Tallgrass system. This capacity will be sufficient to accommodate Tallgrass' existing 78,960 Dth/d of firm subscribed capacity on these segments,[34] as well as providing 121,040 Dth/d of additional capacity. For deliveries in other segments upstream of Segment 800 (i.e. upstream, or west, of NGPL/Lincoln), the proposed gas replacement facilities are sized to meet the existing firm commitments, but can be expanded to serve incremental firm demand with nominal facility modifications.[35]

23. Pipelines routinely use capacity on third-party pipelines to provide service to their customers, and Tallgrass' tariff allows it to enter into transportation agreements with other pipelines and use such capacity to render services to its customers. Tallgrass has submitted information that reconciles the proposed Account 858 contracts with each affected shipper and its proposed receipt and delivery points.[36] The quantities used in the submission reflect the maximum daily quantity in each shipper's contract. Therefore, Tallgrass' proposal to use firm capacity acquired on other interstate pipelines in satisfaction of its own obligations to provide firm service to its existing firm customers appears to satisfy Tallgrass' continuity of service obligation. In addition, existing customers will continue to receive service under Tallgrass' existing tariff terms and conditions. These shippers will not have to satisfy multiple pipelines' tariffs nor will they have to assume increased burdens such as scheduling on multiple pipelines. In addition to their primary firm rights, Tallgrass' existing firm shippers will have access to secondary receipt points and supply on the third-party pipelines as a result of the Account 858 contracts. In the future, if customers believe that any violation of Tallgrass' tariff has occurred, they may file a complaint pursuant to NGA section 5.[37]

24. On the record presented, Tallgrass' proposal to ensure continuity of firm service appears reasonable and meets the criterion for the public interest. As a condition to granting Tallgrass authority to abandon service on the pipeline segment that will be sold to Tallgrass Pony Express for conversion to oil transportation service, the Commission will require Tallgrass to file, before completion of abandonment, all of its Account 858

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[34] The existing shippers which will be served by the Tescott Compressor Station and their subscribed capacity are as follows: (1) Missouri Gas Energy, 60,000 Dth/d; (2) Kansas Gas Service, 10,000 Dth/d; and (3) Chevron USA, 8,960 Dth/d. *See* Tallgrass' April 4, 2013 Answer to staff data request at 1.

[35] *Id*.

[36] *Id*. at 2 and Attachment 1.

[37] 15 U.S.C. § 717d (2012).

contracts that will be used to provide replacement service to its existing firm customers. Compliance with this condition will provide the Commission with the necessary assurance that Tallgrass' abandonment of the Pony Express Pipeline segment will not jeopardize the continuity of existing natural gas transportation services.

2. Rate Impacts

25. KCC requests that the grant of abandonment of the Pony Express Pipeline segment be conditioned on a filing by Tallgrass to reduce its transportation rates by removing from its rate base the sum of: (1) the acquisition premium paid in connection with the original acquisition of the Pony Express Pipeline facilities, plus (2) the current net book value of the pipeline segment to be abandoned (or a proportionate share of the depreciated original-cost next book value of the pipeline segment).[38] Tallgrass denies that there are unresolved rate base issues and argues that it is contrary to Commission policy to require a pipeline to remove from its rates costs related to abandoned facilities before the pipeline's next NGA section 4 rate case. Tallgrass further states that the rate impacts of the undepreciated portion of the acquisition premium of the Pony Express Pipeline facilities remaining in Tallgrass' rate base after abandonment will be inconsequential.[39]

26. We will not condition the abandonment authorization on the removal of the acquisition premium or the current net book value of the abandoned facilities from Tallgrass' currently effective base rates. The Commission does not have the authority to change the rates applicable to other shippers under NGA section 7 conditioning authority. Such a change requires that the Commission make the appropriate findings under NGA section 5.[40] Moreover, any interested entity may also file a properly supported complaint

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[38] *See* September 5, 2012 Notice of Intervention and Protest at 11. Tallgrass proposes, and we require below, that Tallgrass remove from its plant accounts (which make up the figures that lead to rate base) the costs of the facilities that it will sell to Tallgrass Pony Express, as of the effective date of the sale.

[39] *See* September 20, 2012 Answer to Protests at 9 and Attachment A. Tallgrass asserts that after abandonment of the 434-mile pipeline segment, less than half of the 800-mile Pony Express Pipeline will remain as part of Tallgrass' system. Tallgrass estimates that the cost of service impact of the acquisition premium remaining in rate base is expected to be approximately $2.7 million.

[40] *See Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120, 1129 (D.C. Cir. 1979).

pursuant to NGA section 5 to review a pipeline company's rates.[41] Affected shippers may raise and the Commission may address any rate base issues in Tallgrass' next NGA section 4 rate proceeding. Finally, we note, consistent with Article IV of its most recent uncontested settlement, Tallgrass is obligated to file a cost and revenue study no later than four years from the effective date of the settlement (2015).[42]

27. Several parties challenge the adequacy of Tallgrass' agreement with Tallgrass Pony Express for reimbursement of Account 858 costs incurred to obtain gas pipeline transportation services from other interstate pipelines. KCC is concerned with Tallgrass Pony Express' creditworthiness and the adequacy of its reimbursement commitment.[43] The WPA and PSCo request that the Commission condition its approval of the application on Tallgrass being precluded from seeking recovery of upstream transportation costs in a future rate case.[44] PSCo also requests that Tallgrass be required to update the cost of service of the pipeline segment to be abandoned to reflect the capital structure of Tallgrass under new ownership.

28. Tallgrass responds that its agreement with Tallgrass Pony Express for reimbursement of gas pipeline transportation costs from other interstate pipelines for a minimum of between five and ten years is sufficient to ensure reimbursement for a minimum period over a reasonable time horizon, as that term is well beyond the primary term of most customer contracts currently served through the Pony Express Pipeline system.[45] Tallgrass asserts that if circumstances change in the future, including the

[41] Customers filing a NGA section 5 complaint may rely on data and reports the Commission requires to be filed pursuant to its NGA section 10 authority. The Commission notes that Tallgrass, in its Application, asserted that the abandonment of the Pony Express Pipeline segment, the addition of the new facilities and the Account No. 858 reimbursements by Tallgrass Pony Express would not lead to Tallgrass over-recovering its costs of service. Application at 21 and Exh. Z-2. KCC did not challenge this assertion, nor did it attempt to demonstrate that Tallgrass' rates would be no longer just and reasonable and what rates would be just and reasonable, as required by NGA section 5.

[42] *See Kinder Morgan Interstate Gas Transmission LLC*, 136 FERC ¶ 61,201, at P 7 (2011).

[43] *See* September 5, 2012 Notice of Intervention and Protest at 12-13.

[44] *See* September 5, 2012 Motions to Intervene and Comments of WPA and PSCo at 4-5 and 5-7, respectively.

[45] *See* September 20, 2012 Answer to Protests at 10.

circumstances of Tallgrass Pony Express' credit, the Commission will have every opportunity to determine just and reasonable rates for Tallgrass, based on the facts established at that time. In addition, Tallgrass argues that determination of future rates in this NGA section 7 proceeding would be unreasonable and inconsistent with the NGA.[46] Tallgrass further states that PSCo's request for an updated exhibit reflecting Tallgrass' capital structure under new ownership is beyond the scope of this proceeding and irrelevant to any issues related to the application. Tallgrass asserts that it will update its capital structure as required by Commission regulations and in any event by its next rate case.[47]

29. The Commission finds that Tallgrass' reimbursement agreement with Tallgrass Pony Express for a period of five to ten years following abandonment is reasonable. The Commission notes that most of Tallgrass' existing contracts expire by 2017, and the latest expiration date is 2019,[48] which is well within the five-to-ten-year reimbursement period. It is speculative to predict what future events may occur that could affect Tallgrass' requirement for capacity to provide service to firm shippers. In addition, the Commission denies PSCo's request to direct Tallgrass now to update the cost of service of the pipeline segment to be abandoned to reflect the capital structure of Tallgrass under new ownership. As discussed above, consistent with its most recent uncontested settlement, Tallgrass is obligated to file a cost and revenue study no later than four years from the effective date of the settlement (2015).

B. Certificate of Public Convenience and Necessity

30. The Certificate Policy Statement[49] provides guidance as to how the Commission will evaluate proposals for certificating new construction by establishing 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, we balance the public benefits against the potential adverse consequences. Our goal is to

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[46] *Id.*

[47] *Id*. at 16.

[48] *See* Application at Exh. Z-1, identifying Contract No. 553249 as expiring in 2019.

[49] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding and of 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.

31. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially 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.

32. As part of its conversion project, and in order to continue gas service to its existing firm customers after the abandonment of facilities discussed above, Tallgrass proposes to construct certain new replacement facilities. Those facilities include a new mainline compressor station (Tescott Compressor Station), two lateral pipelines, two booster compressor units, and certain auxiliary facilities, as well as constructing or modifying seven interconnecting meter stations and related pipe to enable deliveries into and/or receipts from the interstate pipeline systems of NGPL, Northern Natural, SSC, Trailblazer, and WIC. Tallgrass asserts that the construction of these facilities meets the requirements in the Certificate Policy Statement.

33. First, Tallgrass maintains that it will not rely on any subsidy from existing customers for construction of the facilities. Tallgrass Pony Express has agreed to provide a lump sum reimbursement to Tallgrass for the cost of the new facilities; thus, there will be no rate base increase that Tallgrass could propose to pass on to existing customers. In addition, Tallgrass states that, under the terms of KMIGT's last NGA section 4 rate case settlement in Docket No. RP98-117-000 and its more recent NGA section 5 Stipulation and Agreement in Docket No. RP11-1494-000, Tallgrass has no presumption of rolled-in rate treatment on the Pony Express Pipeline.[50] Tallgrass states that it must attain

[50] *See Stipulation and Agreement of Settlement*, Section 6.4, Docket No. RP11-1494-000, filed May 5, 2011.

revenues sufficient to cover the Pony Express Pipeline's allocable share of the total cost of service, or existing customers can challenge rolled-in rate treatment and require Tallgrass to absorb any under-recovery of revenues versus costs on the Pony Express Pipeline. Tallgrass states that the proposed abandonment sheds costs associated with the Pony Express Pipeline facilities so as to reduce such potential issues.[51]

34. In addition, Tallgrass asserts that no existing firm customer will suffer any degradation of service as a result of the project. Tallgrass states that the facilities to be constructed are for the purpose of ensuring continued comparable service to existing firm customers after the Pony Express Pipeline segment is abandoned.[52] Tallgrass contends that it has structured the project to eliminate or minimize any adverse effects. Tallgrass claims that the facilities proposed for construction will have no effect on existing pipelines and their customers and little or no effect on landowners and communities. Tallgrass states that it will attempt to minimize the need to exercise eminent domain for any additional right-of-way through negotiations with landowners. In addition, Tallgrass avers, the project will result in substantial public benefits by allowing the Pony Express Pipeline segment to serve a more highly valued need with minimal environmental effects.[53]

35. The Commission finds that the proposed construction of the replacement facilities satisfies the criteria of the Certificate Policy Statement. Tallgrass Pony Express will reimburse Tallgrass for the costs of constructing the replacement facilities. Thus, Tallgrass' existing shippers will not subsidize the project. There will be no adverse operational impact on Tallgrass' existing customers, since the purpose of the replacement facilities is to ensure continued comparable service to existing firm customers after the Pony Express Pipeline segment is abandoned. Further, there will be no adverse effect on any other existing pipeline company and their customers, as no new capacity will be created by the project. Tallgrass' project is also designed to minimize impacts on landowners. Tallgrass maintains that the majority of the proposed construction will be located on, or adjacent to, existing pipeline right-of-way. Tallgrass states that it will attempt to minimize the need to exercise eminent domain for any additional right-of-way through negotiations with landowners, and no affected landowner has protested the

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[51] *See* Application at 26 and Exh. Z-2. Tallgrass estimates that the abandonment of the Pony Express Pipeline segment will reduce the overall cost of service underlying Tallgrass' currently effective rates by approximately $15 million annually.

[52] *See* Application at 26.

[53] *Id.*

proposal. Tallgrass recently amended its application to move the location of the Tescott Compressor Station and to realign the proposed Sterling Ethanol Lateral specifically to address landowner concerns. Thus, we find that Tallgrass' proposal will have minimal effects on landowners and communities.

36. The construction of replacement facilities will allow Tallgrass to abandon underutilized gas pipeline capacity for conversion to crude oil transportation, while ensuring that existing customers will continue to receive comparable firm gas service. Based on the benefits the replacement facilities will provide to Tallgrass' existing customers and the lack of adverse impacts on Tallgrass' existing customers, other pipelines and their customers, and minimal impacts on landowners and communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that Tallgrass' proposed construction of replacement facilities is required by the public convenience and necessity.

C. Accounting for New Facilities and Contributions in Aid of Construction

37. Tallgrass proposes to abandon certain mainline natural gas pipeline facilities by transfer to Tallgrass Pony Express, an affiliate, for the purpose of converting the facilities into crude oil pipeline facilities. The facilities will be transferred at their net book value of approximately $90.3 million. In addition, Tallgrass Pony Express will reimburse Tallgrass approximately $8.4 million for the cost of abandoning the facilities and approximately $57.3 million for the cost of constructing certain replacement-type facilities necessary to continue service to existing natural gas firm transportation customers following the abandonment. Tallgrass proposes to record the construction costs for the replacement facilities in Account 186, Miscellaneous Deferred Debits, and reduce the balance in Account 186 with reimbursements received from Tallgrass Pony Express.[54] However, gas plant in process of construction is to be recorded in Account 107, Construction Work in Progress - Gas, under the Commission's accounting regulations, as required by Gas Plant Instruction (GPI) No. 3.[55] Therefore, Tallgrass is directed to record the costs of the replacement facilities in Account 107, instead of Account 186, during the period of construction. Additionally, Tallgrass is directed to

[54] *See* July 1, 2013 Data Response of Tallgrass to question no. 2.

[55] 18 C.F.R. pt. 201 (2013).

account for the reimbursements by Tallgrass Pony Express for the cost of constructing the replacement facilities as a credit to Account 107, as required by GPI No. 2(D).[56]

IV. Environmental Review

38. On September 28, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Pony Express Pipeline Conversion Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

39. We received comments in response to the NOI from three landowners (Gary Sorensen, Al Be, and Joel and Tamara Shaw), the Wyoming Game and Fish Department (WG&FD), the Kansas Department of Health and Environment, and the Nebraska Department of Natural Resources. The primary issues raised concerned noise pollution, endangered species and wildlife habitats, water resources and surface water rights, groundwater and floodplain management, eminent domain, and construction on private property.

40. To satisfy the requirements of the National Environmental Policy Act (NEPA), our staff prepared an environmental assessment (EA) for Tallgrass' proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. In addition, section B.9 of the EA discussed the cumulative impacts of Tallgrass Pony Express' planned conversion of the existing Pony Express Pipeline (PXP) segment to oil; the construction of 260 miles of 24-inch-diameter pipeline (Cushing Lateral) that would connect to Tallgrass Pony Express Pipeline from Lincoln County, Kansas to Cushing, Oklahoma; the construction of 16 span replacements and eight electric oil pump stations along the existing Pony Express Pipeline segment; and the construction of two electric oil pump stations along the Cushing Lateral. The planned conversion of the Pony Express Pipeline segment and the Cushing Lateral would enable Tallgrass Pony Express to transport oil from Guernsey, Wyoming to Cushing, Oklahoma. All substantive comments received in response to the NOI were addressed in the EA.

41. Mr. Gary Sorensen submitted scoping comments stating concerns that Tallgrass' existing pipeline was not buried 17 inches on his property. The EA clarified that Tallgrass confirmed that the existing pipeline depth on his property was no less than

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[56] *Id.*

29 inches, and that Mr. Sorensen agreed with the findings and had no further concerns in this matter.[57]

42. Mr. Al Be's scoping comment stated opposition to the project based on concerns with noise pollution, endangered species, the use of eminent domain, and water pollution from the introduction of oil into the pipeline. The EA concluded that impacts related to noise during construction and operation would be minor and short term.[58] The EA also concluded the proposed project would not adversely affect federally listed species and that consultation requirements under the Endangered Species Act are considered complete.[59] Further, the EA clarified that the operation of the oil pipeline would be regulated by U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA), and any contamination or oil spills associated with the oil pipeline would be regulated by the U.S. Environmental Protection Agency (USEPA) or appropriate state agency.[60] Finally, the EA stated that the eminent domain process may be used by Tallgrass if a certificate is issued for its project and Tallgrass is unable to negotiate an easement with an affected landowner.[61]

43. Joel and Tamara Shaw commented about disturbance of land and wildlife resources on their property and expressed concern that the project would disturb geese that settle on the parcel during migration. The EA addressed these issues and stated that lands disturbed by project construction would be returned to their previous land use, except where there are new permanent aboveground facilities.[62] Given the limited area affected by each of the construction sites and the availability of other suitable habitat in the general area, the EA concluded that the project would have minimal impact on the region's wildlife.[63] Also, the EA concluded that the project is not likely to adversely affect migratory birds, and that effects on these species would not result in long-term or

[57] EA at 3, and as stated in a November 9, 2012 filing by Tallgrass' predecessor, KMIGT.

[58] EA at 58.

[59] EA at 42.

[60] EA at 68.

[61] EA at 50.

[62] EA at 47.

[63] EA at 39.

significant population-level effects, given the abundance of available habitat outside the proposed right-of-way and other facilities.[64]

44. The WG&FD's scoping comments stated concerns about crucial wildlife habitats and avoiding construction from November 15-April 30; protecting streams with automatic shutoff valves; crossing streams containing special status trout species; and prevention of spread of invasive species. The EA indicated that the project activities in Wyoming are limited to existing aboveground facility sites in industrial land or rangeland.[65] As indicated above, the EA concluded that the project would have minimal impact on the region's wildlife. Further, the EA stated that no waterbodies would be crossed by the project in Wyoming.[66] In addition, the EA indicated that in order to prevent the spread of noxious weeds, Tallgrass developed an Exotic and Invasive Species Control Plan (Weed Plan) in consultation with the state and county weed control management programs. The EA found this Weed Plan acceptable.[67]

45. The Nebraska Department of Natural Resources' scoping comments stated concerns with surface water rights, groundwater well registrations and floodplain management, hydrostatic testing impacts on surface water resources, and required permits and moratorium on new surface water permits. The EA stated that with the implementation of our *Erosion Control, Revegetation, and Maintenance Plan* (Plan) and our *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), the project would not significantly affect the quality or quantity of groundwater in the project vicinity, either through abandonment of existing facilities or through construction and operation of Tallgrass' new facilities.[68] In addition, no municipal or sensitive watershed areas would be impacted by the project in Wyoming, Colorado, or Nebraska.[69] Regarding hydrostatic test water, Tallgrass applied for its Nebraska hydrostatic test water discharge permit in June 2013, which is pending approval.[70] Through this permit, the

[64] EA at 40.

[65] EA at Appendix H.

[66] EA at 30, Table 5.

[67] EA at 37, 38.

[68] EA at 29.

[69] EA at 30.

[70] EA at 19.

Nebraska Department of Natural Resources will be able to review Tallgrass' proposed withdrawal and discharge locations.

46. The EA was issued for a 30-day comment period and placed into the public record on June 14, 2013. The Commission received comments on the EA from the WG&FD; WY-MT; the USEPA; Mr. Mark Sokolow;[71] and the Kimball County, Nebraska Zoning Administrator (KCNZ). In addition, on July 24, 2013, Tallgrass filed responses to comments on the EA filed by the KCNZ and WY-MT.[72]

47. The WG&FD recommends requiring Tallgrass to implement accepted best management practices to ensure that all sediments and other pollutants are contained within the boundaries of the work areas and that Tallgrass promptly revegetate disturbed areas to maintain water quality. WG&FD also recommends that Tallgrass park service and fuel equipment away from streams and riparian areas, maintaining a setback for all equipment staging areas at least 300 feet from riparian areas.

48. The only project facilities in Wyoming, as identified in Appendices B and D of the EA, are aboveground facilities that would either be modified or abandoned by removal in existing disturbed rights-of-way. Some of these facilities would also be further evaluated by Tallgrass Pony Express for potential oil transportation use following the proposed abandonment. The EA indicates that Tallgrass would use the best management measures included in the FERC's Plan and Procedures for any disturbance at the existing facilities. These measures would adequately protect surface water and groundwater resources and would ensure adequate restoration and revegetation through regular monitoring. Regarding the WG&FD's recommended setbacks, the Procedures require all equipment that is parked overnight and/or fueled to be at least 100 feet from a waterbody or wetland boundary. We note that WG&FD may further restrict equipment staging areas and refueling to be 300 feet from riparian areas as part of the State of Wyoming's permitting regulations. The EA concludes that Tallgrass' construction/abandonment work for the above facilities in Wyoming would have minimal surface impacts. Therefore, no impacts on aquatic species or habitats are expected, and we find that Tallgrass' proposed activities are generally consistent with the WG&FD's recommendations.

49. Similar to its scoping comment concerns, the WG&FD states that preventing the spread of aquatic invasive species is a priority for the State of Wyoming, and in many cases, the intentional or unintentional spread of organisms from one body of water to

[71] Mr. Sokolow filed a comment in support of the project.

[72] On September 11, 2013, WY-MT filed a notice to withdraw its comments on the EA. As stated above, we will grant WY-MT's motion.

another would be considered a violation of State statute and Wyoming Game and Fish Commission Regulations. The WG&FD provided specific measures that it recommends, such as requiring any equipment entering the State by land from March through November (regardless of where it was last used) to be inspected by an authorized aquatic invasive species inspector prior to its use in any Wyoming waters. If aquatic invasive species are found, the equipment would need to be decontaminated by an authorized aquatic invasive species inspector. As indicated above, the project facilities in Wyoming will not affect waterbodies; therefore, no impacts on aquatic species or habitats are expected.

50. The EA indicates that in order to prevent the spread of noxious weeds, Tallgrass developed its Weed Plan in consultation with the state and county weed control management programs.[73] The Weed Plan identifies the exotic and invasive species that may potentially occur within the project area and provides the management strategies to avoid and minimize the potential introduction or spread of these species. Measures include cleaning all construction equipment prior to mobilization to the site, using certified weed-free mulch and soil, and monitoring the non-cultivated portions of the right-of-way for noxious weeds for the first two growing seasons. Tallgrass would also use spraying or hand removal, as appropriate and as allowed or directed by the landowner, to control noxious weeds. As previously stated, the EA indicates that our staff reviewed the Weed Plan and finds it acceptable.

51. The WG&FD reiterated its recommendation that activities should be avoided in crucial winter ranges from November 15 to April 30 to minimize impacts on wildlife. The EA states that construction of aboveground facilities is scheduled to occur from August to December 2013 and between April 14 and June 14, 2014. The project activities located in Wyoming would occur at existing valve locations disturbing between 0.1 acre and 1.8 acres on the existing right-of-way and 5.3 acres within the existing fenced Glenrock Station. These areas do not provide crucial winter habitat for wildlife; therefore, we conclude that the suggested construction windows are not necessary.

52. The USEPA, in its comments, commends FERC's coordination efforts with various other agencies and entities throughout the development of this project. The USEPA states it has no objection to the project itself, or the EA's recommendation of a finding of no significant impact. The USEPA suggests that all feasible mitigation and monitoring measures outlined in the EA are followed to minimize potential impacts to

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[73] Tallgrass' Weed Plan is available on the FERC's eLibrary website, located at http://fercnet/newfercnet/ed/Info-mgmt-tech/info-tech/elibrary.asp, by searching Docket No. CP12-495-000 and Accession No. 20130329-5195, Attachment 14a.

human health and the environment. We agree and note that all of the recommendations in the EA are adopted in the order.

53. The KCNZ states that Appendix B of the EA incorrectly identifies the Noble Energy Tap/Receipt Meter as being located in Kimball County, Nebraska. The KCNZ is correct. We clarify here that this site is correctly identified on the map on page 11 of Appendix D of the EA as being in Dundy County, Nebraska.[74] KCNZ further comments that the land use affected by construction and operation in Appendix H of the EA for Sites N08 and N03 appears to be an estimate. KCNZ states that the fenced area for these facilities is approximately 4.5 acres. Tallgrass' response to KCNZ's comments clarifies that Appendix H identifies three construction activities planned for Kimball County for a total of 2.7 acres and states that this number represents the actual amount of physical acreage impacted by construction activities.[75]

54. The KCNZ's comments also address Tallgrass' pipeline incident that occurred on the existing Pony Express Pipeline north of Bushnell, Kimball County and question the assumption that because the converted oil pipeline would meet the DOT's regulations, it would not constitute a risk to public safety. As stated in the EA,[76] oil pipelines are under the jurisdiction of the PHMSA and are required to meet the DOT's standards for oil pipelines. FERC has no siting or review authority over oil pipelines. Tallgrass' response to KCNZ identified the safety measures that Tallgrass Pony Express would implement following the abandonment and conversion to oil transportation. These measures include leak detection systems, automatic valves, and a detailed conversion and testing plan that is required by DOT rules prior to operation of the pipeline.

55. Based on the analysis in the EA, we conclude that if constructed, operated, and abandoned in accordance with Tallgrass' application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

56. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The

[74] Confirmed by FERC staff telephone call to Tallgrass and e-mail from Tallgrass on July 18, 2013, and Tallgrass' response to KCNZ's comments on EA at 1, filed July 24, 2013.

[75] Tallgrass' response to KCNZ's comments on EA at 3, filed July 24, 2013.

[76] EA at 59.

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.[77]

<u>The Commission orders</u>:

(A) Tallgrass' request to abandon facilities, as more fully described in the body of this order and in the application, is granted, subject to the conditions described in the order and outlined below and in Appendix B.

(B) Tallgrass shall notify the Commission within 10 days of the effective date of the abandonment approved in Ordering Paragraph (A).

(C) No later than 10 days before the effective date of the abandonment, Tallgrass shall file all Account No. 858 contracts that will be used to provide replacement service to existing shippers.

(D) A certificate of public convenience and necessity is issued to Tallgrass to construct and operate the replacement facilities, as described more fully in the application and in the body of this order.

(E) The authorization in the above paragraph is conditioned on Tallgrass' complying with the environmental conditions set forth in the appendix to this order and all applicable Commission regulations under the NGA, including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(F) The certificate authorized in Ordering Paragraph (D) is conditioned upon Tallgrass completing the construction of the proposed facilities and making them available for service within 18 months of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.

(G) Tallgrass 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 Tallgrass. Tallgrass

[77] *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); *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(H) Tallgrass must comply with the accounting directed in the body of the order. In addition, Tallgrass must submit its final accounting to clear Account 102 with the Commission within six months of the date the sale is consummated, and the accounting submission must provide all the accounting entries related to the sale, along with narrative explanations describing the basis for the entries.

(I) KCC's request for an evidentiary hearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Motions to Intervene

Atmos Energy Corporation
Atmos Energy Marketing LLC
Robin Bailey
Black Hills Utility Holdings, Inc.
Boardwalk Pipeline Partners, LP
Chevron USA, Inc.
ConocoPhillips Company
East Cheyenne Gas Storage, L.L.C.
Exelon Corporation
Kansas Corporation Commission
Kansas Gas Service
Midwest Energy, Inc.
Nebraska Corn Processing LLC
Northern Natural Gas Company
Missouri Gas Energy
Prairie Horizon Agri-Energy LLC
Public Service Company of Colorado
SourceGas Distribution LLC
SourceGas Energy Services Company
Southern Star Central Gas Pipeline, Inc.
Sterling Energy Investments LLC
Tenaska Marketing Ventures
Trenton Agri Products LLC
Wyoming Pipeline Authority

Appendix B

Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Tallgrass 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. Tallgrass 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 delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during abandonment, construction, and operation of the project. The 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 avoidance or mitigation of adverse environmental impact resulting from project activities associated with abandonment, construction, and operation.

3. **Prior to any abandonment and construction**, Tallgrass shall file an affirmative statement certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EIs' authority and have been or would be trained on the implementation of environmental mitigation measures appropriate to their jobs **before** becoming involved with abandonment and construction activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of abandonment and construction activities**, Tallgrass 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 activities 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.

Tallgrass' 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. Tallgrass' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tallgrass 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 must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Federal Energy Regulatory Commission's Upland Erosion Control, Revegetation, and Maintenance Plan, and/or minor field realignments per landowner needs and requirements that 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 abandonment or construction begins**, Tallgrass shall file with the Secretary an Implementation

Plan for review and written approval by the Director of OEP. Tallgrass must file revisions to its plan as schedules change. The plan shall identify:

a. how Tallgrass 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 Tallgrass 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 Tallgrass will assign per spread, and how Tallgrass 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 Tallgrass would give to all personnel involved with abandonment, construction, and restoration (initial and refresher training as the project progresses and personnel change);
f. the company personnel (if known) and specific portion of Tallgrass organization having responsibility for compliance;
g. the procedures (including use of contract penalties) Tallgrass will follow if noncompliance occurs; and
h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
(1) the completion of all required surveys and reports;
(2) the mitigation training of onsite personnel;
(3) the start of abandonment/construction; and
(4) the start and completion of restoration.

7. **Beginning with the filing of its Implementation Plan**, Tallgrass shall file updated status reports with the Secretary on a **biweekly basis until all abandonment, 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 Tallgrass' efforts to obtain the necessary federal authorizations;
b. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other 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. 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 Tallgrass from other federal, state or local permitting agencies concerning instances of noncompliance, and Tallgrass' response.

8. **Prior to receiving written authorization from the Director of OEP to commence abandonment or construction of any project facilities**, Tallgrass shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. Tallgrass must receive written authorization from the Director of the OEP **before placing the project facilities into service.** Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Tallgrass shall file an affirmative statement, certified by a senior company official:

    a. that the facilities have been abandoned and constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; and
    b. identifying which of the Certificate conditions Tallgrass 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. Tallgrass **shall not begin construction** of facilities and/or use of all staging, storage, or temporary work areas in Colorado **until**:

    a. Tallgrass files with the Secretary:

        (1) any additional site evaluation report(s) and voidance/treatment plan(s), as required; and
        (2) comments on the cultural resources reports and plans from the Colorado State Historic Preservation Office, the Iowa Tribe of

Kansas and Nebraska, and the Osage Nation;

b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and

c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Tallgrass in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials 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."**

12. Tallgrass shall file a noise survey for the Tescott Compressor Station **no later than 60 days after placing the station into service**. If a full load condition noise survey is not possible, Tallgrass shall provide an interim survey at maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the station under interim or full horsepower load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, Tallgrass shall install additional noise controls to meet that **level within 1 year of the in-service date**. Tallgrass shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days after it installs the additional noise controls**.