

158 FERC ¶ 61,079  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Norman C. Bay, and Colette D. Honorable.

Northern Natural Gas Company

Docket No. CP16-472-000

ORDER ISSUING CERTIFICATE

(Issued January 30, 2017)

1. On June 24, 2016, Northern Natural Gas Company (Northern) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for a certificate of public convenience and necessity for authorization to construct and operate the Northern Lights 2017 Expansion Project (Northern Lights 2017 Project) in Isanti, Sherburne, and Rice Counties, Minnesota. For the reasons discussed below, the Commission grants Northern's requested certificate authorization, subject to certain conditions.

**I. Background and Proposal**

2. Northern is a natural gas company, as defined by section 2(6) of the NGA,<sup>3</sup> engaged in the transportation of natural gas in interstate commerce. It is a corporation organized under the laws of Delaware, with its principal place of business in Omaha, Nebraska. Northern's 14,700-mile pipeline system extends from Southwest Texas to the upper peninsula of Michigan.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2016).

<sup>3</sup> 15 U.S.C. § 717a(6) (2012).

3. Northern proposes the Northern Lights 2017 Project to expand its Market Area<sup>4</sup> capacity to meet its customers' projected growth in demand.<sup>5</sup> Northern proposes to construct and operate a total of 4.8 miles of branch line loop extensions, and to install and operate an additional compressor unit at its existing Faribault Compressor Station. Northern states that the Northern Lights 2017 Project will provide for incremental winter peak-day firm service of approximately 76,000 dekatherms (Dth) per day serving residential, commercial, and industrial customers in its Market Area.

4. Specifically, Northern proposes to construct and operate: (1) approximately 2.8 miles of 12-inch-diameter pipeline, extending west from the end of Northern's existing St. Cloud branch line loop and running adjacent to the St. Cloud branch line (St. Cloud Loop); (2) approximately 2 miles of 8-inch-diameter pipeline, extending south from the end of Northern's existing Princeton branch line loop and running adjacent to the Princeton branch line (Princeton Loop); (3) one 15,900 horsepower (hp) gas-driven compressor unit at Northern's existing Faribault compressor station in Rice County, Minnesota, which will tie into Northern's existing B-line, C-line, and D-line;<sup>6</sup> and

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<sup>4</sup> Northern's system is divided into two areas: the Field Area and the Market Area. Northern's Market Area is the geographical area located north of the inlet to Northern's Clifton Compressor Station in Clay County, Kansas. The Market Area includes pipeline configured in a grid system, with gas flowing into the Market Area facilities from geographically distinct supply basins via a number of third party interstate pipelines and Northern's own transmission facilities.

<sup>5</sup> See Northern's Application at 4-8. Northern's proposed Northern Lights 2017 Project is a discrete, stand-alone project under the umbrella of the larger Northern Lights expansion plan. The Northern Lights expansion plan is a multi-year commitment to expand Northern's Market Area capacity to respond to its customer's future demand. The Commission has approved other projects related to previous phases of the Northern Lights expansion plan. *Northern Natural Gas Co.*, 127 FERC ¶ 61,133 (2009); *Northern Natural Gas Co.*, 119 FERC ¶ 61,111 (2007); *Northern Natural Gas Co.*, 118 FERC ¶ 61,136 (2007). Other construction activities related to the Northern Lights expansion plan have been undertaken by Northern pursuant to its Part 157 blanket certificate authority. Northern has made prior notice filings pursuant to the Part 157, Subpart F blanket certificate regulations in Docket Nos. CP08-188-000, CP08-97-000, CP08-95-000, CP08-76-000, and CP08-56-000.

<sup>6</sup> Northern currently operates one 13,136 hp unit at the Faribault Compressor Station.

(4) appurtenant facilities.<sup>7</sup> Northern also proposes to remove short segments of pipeline to accommodate compressor station tie-ins.

5. Northern held an open season from October 1 through October 26, 2015, to solicit interest for firm transportation service commencing on or after November 1, 2017, from certain specified receipt points to delivery points located north of the Ventura, Iowa compressor station in Northern's Market Area. As a result of the open season, Northern executed agreements with four shippers for 75,937 Dth per day of incremental winter peak-day firm service commencing November 1, 2017.<sup>8</sup> In conjunction with its open season, Northern also provided its firm customers with existing capacity north of the Ventura, Iowa compressor station in Northern's Market Area an opportunity to turn back their capacity, but it received no requests to do so.<sup>9</sup>

6. Northern estimates that the Northern Lights 2017 Project will cost \$44,068,126. Northern proposes to charge its existing rates under Rates Schedules TFX and TF as initial recourse rates for firm service provided by the expansion. Northern proposes to charge its generally applicable Market Area fuel rate as a fuel charge for transportation service using the expansion capacity. Northern also requests a predetermination that it may roll the costs of the project into its existing rates in a future rate case.

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<sup>7</sup> In its application, Northern also identified facilities it plans to construct or modify pursuant to its blanket certificate and Section 2.55(a) of the Commission's regulations. On September 1, 2016, in response to Commission staff's August 9, 2016 data request, Northern clarified that none of that construction is contingent on Northern's application for the Northern Lights 2017 Project.

<sup>8</sup> Specifically, Northern will provide the following service under the project: (1) 50,103 Dth per day to CenterPoint Energy Minnesota Gas; (2) 19,913 Dth per day to Xcel Energy; (3) 5,258 Dth per day to Al-Corn Clean Fuel; and (4) 663 Dth per day to Midwest Natural Gas, Inc.

<sup>9</sup> During this same open season, several shippers expressed an expected need for additional increases to transportation service in the future. Northern notes that it has entered an agreement for service commencing in 2018 and 2019, but that any facilities required to provide that future service will be constructed at a later date and pursuant to separate authorizations.

## II. Notice, Interventions, and Comments

7. Notice of Northern's application was published in the *Federal Register* on July 14, 2016.<sup>10</sup> The notice established July 29, 2016, as the deadline for filing comments and interventions. Timely, unopposed motions to intervene were filed by Atmos Energy Corporation and jointly by Northern States Power – Minnesota and Northern States Power – Wisconsin.<sup>11</sup> The Natural Gas Supply Association filed comments in support of the project.

## III. Discussion

8. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>12</sup>

### A. Certificate Policy Statement

9. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>13</sup> The Certificate Policy Statement establishes 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.

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<sup>10</sup> 81 Fed. Reg. 45,469.

<sup>11</sup> 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(c)(1) (2016).

<sup>12</sup> 15 U.S.C. §§717f(c) and (e) (2012).

<sup>13</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

10. 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 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 facilities. 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.

11. As noted above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Northern proposes to charge its existing applicable rates under Rate Schedules TFX and TF as the recourse rates for service on the Northern Lights 2017 Project. As discussed below, illustrative rates calculated to recover the incremental costs associated with the Northern Lights 2017 Project are lower than Northern's existing system rates. Therefore, we will accept Northern's proposal to charge its existing rates as initial recourse rates for service on the Northern Lights 2017 Project. However, as is also discussed below, in order to protect Northern's existing shippers from the risk of subsidizing the expansion project in the future, the Commission is denying Northern's request for a predetermination that Northern may roll the costs of the expansion project into its system rates in a future rate case. Based on the above, we find that Northern's existing shippers will not subsidize the project, and the Certificate Policy Statement's threshold requirement of no subsidization is satisfied.

12. Next, we find that the Northern Lights 2017 Project will not have adverse impacts on Northern's existing customers because the project will not degrade any existing service. We also find that the Northern Lights 2017 Project will not adversely impact other pipelines in the Market Area or their captive customers since the purpose of the proposal is to serve growth in the gas requirements of Northern's customers, not to displace loads on other systems. Further, none of Northern's existing customers and no other pipelines in the Market Area have filed adverse comments regarding Northern's proposal.

13. We further find that Northern has routed and designed the Northern Lights 2017 Project to have minimal adverse impacts on landowners and surrounding communities. The majority of construction activities for the project will be conducted within existing rights-of way. Northern's use of existing land rights will minimize the number of new

landowners affected by the project.<sup>14</sup> In addition, Northern identified the concerns of landowners and communities and accommodated their concerns where feasible during the pre-filing process.

14. Northern's proposed Northern Lights 2017 Project will enable it to provide 75,937 Dth per day of firm natural gas transportation service for residential, industrial, and commercial customers in its Market Area. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities, the Commission finds that Northern's proposal is consistent with the Certificate Policy Statement. Based on this finding and the environmental review, as discussed below, the Commission finds that the public convenience and necessity require approval and certification of Northern's proposal under section 7 of the NGA, subject to the environmental and other conditions in this order.

## **B. Rates**

### **1. Initial Recourse Rates**

15. Northern proposes to charge its currently effective rates under Rate Schedules TFX and TF as the initial recourse rates for firm transportation service utilizing the proposed facilities. For comparison purposes, Northern calculated an illustrative monthly incremental reservation charge for the Northern Lights 2017 Project of \$8.083 per Dth.<sup>15</sup> This illustrative incremental monthly reservation charge is lower than the \$9.629 per Dth weighted average of Northern's existing Rate Schedule TFX winter and summer recourse reservation charges, and lower than the \$8.766 per Dth weighted average of Northern's existing Rate Schedule TF winter and summer recourse reservation charges.<sup>16</sup> Similarly,

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<sup>14</sup> Northern will acquire 3.21 acres of land north of the existing Faribault Compressor Station to expand the existing fenced-in station yard to accommodate the new facilities and to provide a buffer between the station yard and the adjoining landowner. Northern's Application at 12.

<sup>15</sup> Northern's September 6, 2016 Data Response, Response No. 3. As requested, this calculation excludes costs incurred for facilities constructed under Northern's blanket certificate or Section 2.55(a) of the Commission's regulations. The cost of service is based on depreciation and return factors, and a variable cost allocation method approved in Northern's last general rate case settlement in Docket No. RP04-155. *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 (2005).

<sup>16</sup> Northern's September 6, 2016 Data Response, Response No. 4.

Northern's illustrative incremental commodity charge of \$0.016 per Dth is lower than \$0.0365 per Dth, Northern's existing commodity charge under both Rate Schedules TFX and TF.<sup>17</sup> Therefore, we approve Northern's proposal to charge its currently effective rates under Rate Schedules TFX and TF as the recourse rates for transportation service utilizing the proposed facilities.

## 2. **Fuel**

16. Northern proposes to charge its existing Market Area fuel rate, as set forth in its FERC Gas Tariff. In response to a data request, Northern explains that its fuel model indicates the project will result in a slight reduction of fuel use north of the Ventura, Iowa interconnect with Northern Border Pipeline and a slighter reduction to the overall Market Area fuel rate.<sup>18</sup> Therefore, we approve Northern's proposal to charge its system Market Area fuel rate for transportation on the capacity associated with the Northern Lights 2017 Project facilities.

## 3. **Predetermination of Rolled-In Rate Treatment**

17. Northern requests a predetermination of rolled-in rate treatment for costs associated with the Northern Lights 2017 Project. To receive authorization for rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future section 4 proceeding, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).<sup>19</sup> Northern is not able to make a showing that revenues will exceed costs for the Northern Lights 2017 Project. Therefore, we are denying Northern's request for a predetermination supporting rolled-in rate treatment for the Northern Lights 2017 Project costs.

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<sup>17</sup> Northern's September 6, 2016 Data Response, Response No. 3, page 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

18. Northern's Exhibit N shows that for each year from 2017 through 2021, incremental revenues from the Northern Lights 2017 Project will be less than the corresponding incremental costs.<sup>20</sup> However, Northern asserts that the Commission should consider all of the projects under the larger Northern Lights expansion plan cumulatively in order to find that a predetermination supporting rolled-in rate treatment is appropriate for the Northern Lights 2017 Project. Northern explains that the Northern Lights expansion plan was initiated in 2007 as a commitment to expand its Market Area capacity at least every two years through 2026 in response to its customers' future growth requirements, and to avoid the termination of contracts for then-existing load subscribed by Centerpoint Energy Minnesota Gas (CenterPoint), Xcel Energy (Xcel), and Flint Hills Resources, LP (Flint Hills), whose cumulative revenues were then valued at approximately \$40 million annually.

19. Specifically, Northern's Exhibit N shows that the Northern Lights 2017 Project's incremental costs in 2017 of \$9,903,000 exceed its annual projected revenues of \$4,921,000 by \$4,982,000.<sup>21</sup> Annual losses of similar magnitude are projected through 2021 for the project. However, Northern emphasizes that cumulative 2017 revenues associated with all Northern Lights expansion plan projects, as shown in Exhibit N-1, including the Northern Lights 2017 Project, exceed those projects' cumulative costs by approximately \$22,800,000. Similar annual revenue excesses over costs are projected through 2021. Moreover, Northern avers that it is appropriate to further increase each annual revenue amount by approximately \$46 million to account for the current value of revenues Northern retained by avoiding termination of the contracts with CenterPoint, Xcel, and Flint Hills. Finally, Northern states that when it seeks to roll the costs associated with the Northern Lights 2017 Project into its system rates, it will bear the burden of demonstrating that such a roll-in of rates is warranted and consistent with the Commission's prior orders on Northern Lights projects.<sup>22</sup>

20. When the Commission makes an upfront determination in a certificate proceeding as to whether a project should receive rolled-in rate treatment, it does so based on the specific costs and revenues associated with the facilities being constructed. The

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<sup>20</sup> Northern's Application at Exhibit N, page 1.

<sup>21</sup> Northern's Application at Exhibit N, Page 1, as revised in Northern's September 6, 2016 Data Response, Response No. 6.

<sup>22</sup> Northern's Application at 18-19 (citing *Northern Natural Gas Co.*, 127 FERC ¶ 61,133; *Northern Natural Gas Co.*, 119 FERC ¶ 61,111; *Northern Natural Gas Co.*, 118 FERC ¶ 61,136; *Northern Natural Gas Co.*, 115 FERC ¶ 61,146 (2006); and *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 (2005)).

Commission has previously ruled that it would not be appropriate or consistent with the Certificate Policy Statement to include the revenues from the retained load under Northern's restructured agreements with existing shippers in determining whether the costs of an expansion should be afforded a presumption of rolled-in rate treatment.<sup>23</sup> Northern has proposed the Northern Lights 2017 Project as a discrete, stand-alone project, and the Commission's rate determination here is based on the underlying costs and billing determinants associated only with the Northern Lights 2017 Project. Therefore, because the revenues from the Northern Lights 2017 Project are not projected to exceed the costs, the Commission will deny a predetermination of rolled-in rate treatment. Nevertheless, this denial is without prejudice to Northern filing for and fully supporting rolled-in rate treatment in a future rate case.

#### **4. Negotiated Rate Agreements**

21. Northern states that it will provide at least some service under negotiated rate agreements. Northern must file either its negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement<sup>24</sup> and the Commission's negotiated rate policies.<sup>25</sup> Northern must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.<sup>26</sup>

#### **C. Environmental Analysis**

22. On October 9, 2015, Commission staff began its environmental review of the Northern Lights 2017 Project by granting Northern's request to use the pre-filing process and assigning Docket No. PF15-33-000. As part of the pre-filing review, staff

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<sup>23</sup> *Northern Natural Gas Co.*, 127 FERC ¶ 61,133 at P 21.

<sup>24</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194 (1996).

<sup>25</sup> *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

<sup>26</sup> Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2016).

participated in open houses sponsored by Northern to explain our environmental review process to interested stakeholders. The open houses were held on October 19 and 27, 2015, in Cambridge and Faribault, Minnesota, respectively, and on March 14, 2016, in Zimmerman, Minnesota.<sup>27</sup>

23. On April 11, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Northern Lights 2017 Expansion Project, and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*<sup>28</sup> and 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.

24. In response to the NOI, the Commission received environmental comments from the U.S. Environmental Protection Agency (EPA) and the Minnesota Department of Natural Resources (Minnesota DNR). The EPA provided comments on a number of general environmental issues related to pipeline construction, including impacts on water resources and air quality, adverse noise and socioeconomic impacts, and concerns about hazardous materials and safety. The Minnesota DNR's comments concerned impacts related to crossing the Rum River.

25. To satisfy the requirements of the National Environmental Policy Act,<sup>29</sup> Commission staff prepared an environmental assessment (EA) for Northern's 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. All environmental comments received in response to Northern's application and the NOI were addressed in the EA.

26. The EA was issued for a 30-day comment period and placed into the public record on November 9, 2016. In response to the EA, the Commission received comments from the Minnesota Pollution Control Agency (Minnesota PCA), an affected landowner, EPA, and Northern.

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<sup>27</sup>Additional open houses were held and attended by Commission staff in New Prague, Minnesota and Lake Mills, Iowa in October 2015 for facilities that were ultimately not proposed by Northern in its application for this project.

<sup>28</sup> 81 Fed. Reg. 22,590 (2016).

<sup>29</sup> 42 U.S.C. §§ 4321-4370f (2012).

27. Minnesota PCA requests that copies of the Spill Prevention Control and Countermeasure Plan (SPCC Plan), the Plan for the Inadvertent Release of Drilling Mud (Inadvertent Release Plan), and the Stormwater Pollution Prevention Plan (SWPP) be submitted to the agency for review. Northern responded, noting that it subsequently provided the SPCC Plan and Inadvertent Release Plan to Minnesota PCA via email and that it would provide Minnesota PCA with the SWPP prior to construction. Additionally, copies of Northern's SPCC Plan and Inadvertent Release Plan are publicly available with Northern's original application,<sup>30</sup> and Northern is required to publicly file its SWPP for Commission staff review and approval prior to construction.

28. Minnesota PCA also states that the EA did not describe the potential for toxic exposure near compressor stations. As discussed in the EA,<sup>31</sup> the project proposes to expand the existing Faribault Compressor Station, which would result in an increase in operational emissions. For a station compressing processed, transmission-quality gas using gas-fired turbines, the principal emissions of concern to public health are nitrogen oxides (NO<sub>x</sub>). Potential exposures to NO<sub>x</sub> and all other criteria air pollutants were evaluated by modeling the proposed modified station's potential to emit and comparing the modeled concentrations to the National Ambient Air Quality Standards primary standards, which are set by EPA to protect the health of the general population, including sensitive subgroups.<sup>32</sup> Modeled concentrations fell well below these standards.<sup>33</sup>

29. An affected landowner on the St. Cloud Loop requests that access to his property be preserved via the single existing private road, that the associated gate remain managed and locked at all times when not in use, and that both the road and gate be maintained in the same or better condition. Northern responded, stating that it has communicated with the affected landowner to reassure him he will have access to the road and to his property, that the road will be kept in good condition, and that the shared gate to his property will be managed to maintain functionality and to prevent vandalism and theft. We have included Environmental Condition 15, which requires Northern to file its special construction procedures and plans to maintain property access, for staff's review, before construction will be authorized near the affected landowner's property.

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<sup>30</sup>Application at Appendices 1F and 2A (eLibrary accession number 20160624-5196).

<sup>31</sup> EA at 60-62.

<sup>32</sup> The current National Ambient Air Quality Standards are listed on the EPA's website at <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

<sup>33</sup> EA at 60-62.

30. In its comments, EPA recommends the use of fuel-efficient machinery, energy-efficient lighting, and green or pollinator landscaping both at the compressor station and for reclamation of project workspaces. As the project areas are all in attainment with the National Ambient Air Quality Standards under the Clean Air Act and emissions from construction equipment would be minimal and temporary, we believe that requiring additional mitigation for construction equipment over existing standards is not warranted. Northern has committed to reseed open uplands using seed mixes requested by the landowner or per local Natural Resource Conservation Service recommendations. We further note that the majority of the construction impacts would occur on agricultural land and would not be seeded.

31. Although EPA disagrees with the EA's conclusion on the feasibility of translating the project's greenhouse gas contribution into physical effects on the global environment, it comments that the EA's calculation of emissions associated with the project is sufficient and in accordance with recent guidance.<sup>34</sup> We note that in addition to the emissions directly associated with the operation of the project, Commission staff, using an EPA-developed methodology, estimates that, if the project transports the maximum 76,000 Dth per day of natural gas and all of such gas is used for combustion end uses, downstream end-use could result in about 1.5 million metric tons of carbon dioxide emissions per year. We note that this carbon dioxide estimate represents an upper bound for the amount of end-use combustion that could result from the gas transported by this project. This estimate assumes the maximum capacity is transported 365 days per year, which is rarely the case because many projects are designed for peak use. In addition, some of the gas may displace other fuels, which could lower total carbon dioxide emissions, or displace gas that otherwise would be transported via different means, resulting in no change in carbon dioxide emissions. As such, this upper bound estimate involves a significant amount of uncertainty. For example, it is unlikely that this total amount of carbon dioxide emissions would occur, and emissions are likely to be significantly lower than the above estimate.

32. Based on the analysis in the EA and as supplemented herein, we conclude that if constructed and operated in accordance with Northern's application and supplements, and in compliance with the environmental conditions in the appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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<sup>34</sup> Council on Environmental Quality, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (August 2016).

33. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>35</sup>

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern authorizing it to construct and operate the Northern Lights 2017 Expansion Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Northern's completing the authorized construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Northern's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Northern's compliance with the environmental conditions listed in the appendix to this order; and

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<sup>35</sup> See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

- (4) Northern's execution of firm contracts for volumes and service terms equivalent to those in its precedent agreement, prior to commencement of construction.

(C) Northern's existing rates for firm transportation under Rate Schedules TFX and TF are approved as initial recourse rates, as described above.

(D) Northern's request to utilize its Market Area fuel rate is approved, as described in the body of this order.

(E) Northern's request for a predetermination supporting rolled-in rate treatment for the costs of the Northern Lights 2017 Project in its next NGA general section 4 rate proceeding is denied without prejudice to Northern contending in such proceeding that rolling such costs into its system rates is appropriate.

(F) Northern shall file an executed copy of its negotiated rate agreements or a tariff record setting forth the essential terms of the agreements associated with the project at least 30 days, but not more than 60 days, before the proposed effective day of such rates.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## APPENDIX

### Environmental Conditions

As recommended in the Environmental Assessment (EA), and as supplemented in the Order, this authorization includes the following conditions:

1. Northern Natural Gas Company (Northern) 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. Northern 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 the 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**, Northern 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. **As soon as they are available, and before the start of construction**, Northern 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 modifications of

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

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

5. Northern 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 the OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the FERC *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 authorization and before construction begins**, Northern shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Northern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Northern 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 Northern 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 Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Northern 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. Northern shall employ at least one EI per construction spread. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

- d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern 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 must also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. an update on Northern'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 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. 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 Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.
9. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities**, Northern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Northern must receive written authorization from the Director of the 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.

11. **Within 30 days of placing the authorized facilities in service**, Northern 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 conditions in the Order Northern 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.
12. Northern shall not proceed with construction within 100 feet of any active non-raptor migratory bird nest identified during preconstruction avian surveys until the Minnesota Department of Natural Resources and U.S. Fish and Wildlife Service are contacted to determine any necessary avoidance or mitigation measures and Northern files the results of that communication.
13. **Prior to construction of horizontal directional drills (HDD) P4-2, P4-3, and P4-4 on the Princeton Loop, and HDDs P4-3 and P4-4 on the St. Cloud Loop**, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, an HDD noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at nearby noise sensitive areas (NSAs). During drilling operations, Northern shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than a day-night level ( $L_{dn}$ ) of 55 decibels on the A-weighted frequency scale (dBA) at the NSAs.
14. Northern shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit at the Faribault Compressor Station in service. If a full load condition noise survey is not possible, Northern shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, Northern shall install additional noise controls to meet that level **within 1 year** of the in-service date. Northern shall confirm compliance with the  $L_{dn}$  of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

15. **Prior to construction at the gated property(s) near milepost 1.7**, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, a description of Northern's special construction provisions to assure property access and road and gate maintenance during construction.