117 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.:

North Baja Pipeline, LLC — Docket Nos. CP06-61-000 and CP01-23-003

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued October 6, 2006)

1. On February 7, 2006, in Docket No. CP06-61-000, North Baja Pipeline, LLC (North Baja) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to expand and modify its existing interstate natural gas pipeline system to facilitate the importation of over 2.7 Bcf per day of regasified liquefied natural gas (LNG) from Mexico into California and Arizona markets. Specifically, North Baja proposes to modify its existing system to accommodate bi-directional gas flow, construct a new meter station and 36-inch pipeline interconnect with Southern California Gas Company (SoCal Gas), construct approximately 46 miles of lateral facilities to serve electric generation facilities, and loop its entire approximately 80-mile existing system with a combination of 42-inch and 48-inch diameter pipeline. North Baja proposes to construct the proposed expansion in three phases, with projected in-service dates of October 1, 2007, June 1, 2009, and January 1, 2010. In addition, pursuant to section 3 of the NGA, North Baja seeks in Docket No. CP01-23-003 to amend its Presidential Permit to allow for modifications to its border facilities and the importation of natural gas.

2. In this order, we reach a preliminary determination supporting approval of North Baja's proposal. We are also granting North Baja's request for a predetermination supporting rolled-in rate treatment for the costs of the mainline facilities of the proposed project and incremental rate treatment for its expansion lateral facilities. This order, however, does not consider or evaluate any of the environmental issues in this proceeding. Those issues remain under review and will be addressed in a subsequent order, following completion of our environmental analysis. Nothing in this order limits our actions with respect to that pending environmental analysis. Thus, final authorization for North Baja's proposal depends on a favorable environmental analysis.

I. Background and Proposals

3. North Baja is a limited liability company formed under the laws of the State of Delaware and is a wholly-owned, indirect subsidiary of TransCanada PipeLines Ltd. North Baja is a natural gas company as defined by section 2(6) of the NGA and is in the business of transporting natural gas in interstate commerce, within the jurisdiction of the Commission.[1] North Baja operates a 79.8-mile interstate natural gas pipeline extending from an interconnection with the interstate pipeline facilities of El Paso Natural Gas Company (El Paso) near Ehrenberg, Arizona through southeastern California to a point on the international border located between Yuma, Arizona and Mexicali, North Baja Mexico, where the pipeline connects with the Gasoducto Bajanorte, S. de R.L. de C.V. (Gasoducto Bajanorte), a pipeline owned by Sempra Energy and located in Mexico. North Baja is the United States portion of the international North Baja/Gasoducto Bajanorte Pipeline Project. North Baja's pipeline was designed to provide 512,500 Dth per day of firm transportation from its interconnection with El Paso at Ehrenberg to its interconnection with Gasoducto Bajanorte at the international boundary.

A. Docket No. CP06-61-000

1. Mexican LNG Terminals

4. North Baja states that its pipeline and Gasoducto Bajanorte were built in 2002 to export domestic natural gas to Mexico, primarily to serve gas-fired electric generation facilities in Baja California, Mexico.[2] North Baja states that since completion of the North Baja/Gasoducto Bajanorte Project, several proposals to build LNG terminals on the Baja California, Mexico coast, near the terminus of the North Baja/Gasoducto Bajanorte Project at Rosarito, Baja California, Mexico have been initiated. North Baja asserts that these LNG terminals will be able to take advantage of the existing North Baja/Gasoducto Bajanorte Project pipeline system to deliver substantial volumes of regasified LNG to markets in California and Arizona.

5. North Baja states that Sempra Energy's Energia Costa Azul LNG terminal (ECA Terminal) is currently under construction and is anticipated to be completed by late 2007, with an anticipated commercial in-service date of January 1, 2008. This terminal will have a baseload deliverability of 1 Bcf per day and a peak-day deliverability of 1.3 Bcf per day. In addition, North Baja reports that Sempra Energy conducted an open season for an expansion of the ECA Terminal between April 17, 2006 and May 12, 2006 for up

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[1] 15 U.S.C § 717a(6).

[2] *See North Baja Pipeline, LLC*, 95 FERC ¶ 61,259, *order on reh'g*, 96 FERC ¶ 61,090 (2001); *North Baja Pipeline, LLC*, 98 FERC ¶ 61,020 (2002).

to an additional 1.3 Bcf per day of capacity, during which potential customers expressed interest in up to 2.9 Bcf per day of capacity.[3] North Baja states that Sempra Energy expects to enter into firm contracts with shippers for the terminal expansion capacity by September 2006.[4] When the expansion is completed in 2010, the ECA Terminal will have a total baseload deliverability of 2.0 Bcf per day and a peak day deliverability of 2.6 Bcf per day.

6. In addition, North Baja states that Chevron Corporation is developing the Terminal GNL Mar Adentro de Baja California Project (Mar Adentro Terminal), with a planned deliverability of 1.0 Bcf per day. This project will be located approximately 7.8 miles off the coast of Tijuana, Mexico, and just offshore of South Coronado Island. The Mar Adentro Terminal has received approvals from the Mexican Regulatory Energy Commission (CRE), the Secretariat of Environment and Natural Resources (SEMARNAT), and the Secretariat of Communications and Transport (SCT), and is currently anticipated to be in service in January 2010.

2. **Proposed Facilities**

7. In Phase I of its proposed expansion North Baja seeks authority to: (1) modify its existing Ehrenberg Compressor Station in La Paz County, Arizona and its Ogilby Meter Station in Imperial County, California to allow for northbound gas flow; (2) construct a new meter station, the Blythe Meter Station in Riverside County, California, and a 36-inch diameter interconnection with Southern California Gas Company's (SoCalGas) existing 36-inch diameter pipeline at the proposed Blythe Meter Station; (3) construct a new 42-inch diameter pipeline crossing under the Colorado River in La Paz County, Arizona and Riverside County, California to connect the Ehrenberg Compressor Station with the Blythe Meter Station; and (4) construct a 0.625 mile, 10-inch diameter lateral to connect the Blythe Meter Station with Blythe Energy's existing supply pipeline in Riverside County, California used to provide service to an existing power plant, the Blythe Energy Facility I, near Blythe, California (the Blythe Energy Interconnect Lateral or BEI Lateral). Upon completion of the proposed Phase I facilities, North Baja will be able transport up to 614,000 Dth per day of natural gas from Mexico to markets in California and Arizona. In addition, North Baja will be able to transport 120,000 Dth per day on the BEI Lateral to serve the Blythe Energy Facility I. North Baja anticipates placing the Phase I facilities into service on June 1, 2007.

[3] North Baja's July 7, 2006 Data Response at Question 1.

[4] *Id.*

8. In Phase I-A, North Baja proposes to construct a 45.7 mile, 16-inch-diameter lateral extending from a point north of its Ogilby Meter Station westward through Imperial County, California to the Imperial Irrigation District's El Centro Generating Facility (the IID Lateral). The IID Lateral will allow North Baja to provide up to 110,000 Dth per day of firm transportation service for the Imperial Irrigation District. North Baja anticipates placing the IID Lateral into service on June 1, 2009.

9. Finally, in Phase II of its expansion, North Baja proposes to construct a new loop line (B-Line) parallel to its existing 30-inch and 36-inch diameter mainline system (A-Line) in Riverside and Imperial Counties, California.[5] Specifically, North Baja proposes to construct 68.1 miles of 48-inch diameter pipeline and 11.2 miles of 42-inch diameter pipeline which will entirely loop North Baja's existing mainline system. The new B-Line will be fully integrated with the existing A-Line through a series of interconnects. Upon completion of the Phase II facilities, North Baja's system will have a northbound capacity of 2,932,000 Dth per day. North Baja anticipates placing the Phase II facilities into service by January 1, 2010, contemporaneous with the anticipated in-service dates of the Energia Costa Azul terminal expansion and the Mar Adentro Terminal. North Baja estimates that the entire cost of all phases of the expansion will be $290,963,377.

3. North Baja's Open Seasons and Markets

10. In response to the development of the LNG terminals in Mexico, North Baja conducted two open seasons for expansions and modifications to its pipeline facilities. After the first open season for Phase I service, conducted from March 31 through September 2003, two shippers, Coral Energy Resources, LP (Coral) and Sempra Energy LNG Marketing Corp. (Sempra LNG), entered into precedent agreements for a total of 312,000 Dth per day of firm northbound capacity on North Baja's system for 20-year terms.

11. In addition, as part of this open season process, North Baja provided its existing shippers holding southbound capacity on its system an opportunity to rationalize capacity and reverse the primary path of their original capacity, subject to the shippers' reimbursing North Baja for the costs necessary to convert system facilities to accommodate the reversal of flow.[6] As a result, some of North Baja's existing shippers elected to reverse the primary path of 302,000 Dth per day of southbound capacity to northbound capacity. Separately, North Baja and these shippers requested, and ultimately

[5] The new 42-inch-diameter pipeline crossing the Colorado River in Arizona proposed in Phase I will be integrated into the B-Line.

[6] *See, e.g.*, North Baja's FERC Gas Tariff, Original Volume No.1, First Revised Sheet No. 203; *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004).

received, Commission approval for such shippers to permanently release their transportation contracts once LNG becomes available.[7]

12. Based on the commitment levels from the initial open season and the restructuring of capacity commitments of existing shippers, once service commences from the ECA LNG facility in 2007, the total Phase I northbound capacity of North Baja's system will be 614,000 Dth per day (312,000 Dth per day of new capacity, plus 302,000 Dth per day of reversed-path existing capacity). Existing shippers on North Baja will retain 185,000 Dth per day of southbound capacity.[8]

13. North Baja conducted a second open season from May 11 through June 8, 2005, for Phase II of its proposed expansion to coincide with the anticipated in-service dates of the Mar Adentro Terminal and the ECA Terminal expansion in 2010. Five shippers, Chevron USA, Inc. (Chevron USA), ConocoPhillips Company (ConocoPhillips), Coral, Sempra LNG, and Woodside Energy (USA) INC (Woodside), entered into precedent agreements for 2,732,500 Dth per day of firm northbound transportation service for 20-year terms.[9] This volume, combined with the Phase I northbound capacity in 2010 of 584,000 Dth per day, yields a total of 3,316,500 Dth per day of northbound capacity under precedent agreements, which exceeds the proposed 2,932,000 Dth per day northbound capacity of North Baja's system after the Phase II facilities are in service.[10]

14. North Baja explains that the ultimate south to north contracted capacity on the North Baja expansion project will be limited to the total anticipated delivery capability of the ECA and Mar Adentro Terminals, less anticipated minimum load deliveries that will occur prior to delivery of gas to North Baja.[11] Thus, North Baja states that it anticipates

[7] *North Baja Pipeline, LLC,* 109 FERC ¶ 61,269 (2004); *North Baja Pipeline, LLC,* 111 FERC ¶ 61,119 (2005); and *North Baja Pipeline, LLC,* 111 FERC ¶ 61,435 (2005).

[8] In 2010, however, 30,000 Dth per day of the northbound capacity attributable to the existing shippers reverts to southbound capacity. Thus, the Phase I northbound volumes will be reduced to 584,000 Dth per day and the southbound volumes will increase to 215,000 Dth per day.

[9] North Baja states that Chevron USA has indicated that it will utilize the entire capacity of its affiliate's proposed Mar Adentro Terminal, 1,070,000 Dth per day.

[10] *See* North Baja's August 7, 2006 Data Response at Question 1 and Attachment 1 (revised narrative section of Exhibit I). On a volumetric basis, the northbound capacity in 2010 will be 2,753,052 Mcf per day.

[11] North Baja's Application at 10.

that after the awarding of the expansion capacity at Sempra's ECA Terminal, prospective shippers on North Baja's system that were not awarded capacity at the LNG terminal would exercise their termination rights under their precedent agreements. This would reduce the level of North Baja's commitments to reflect the size of North Baja's expansion.

15. In its July 7, 2006 response to staff's June 29, 2006 data request, North Baja states that ConocoPhillips and Woodside terminated their transportation precedent agreements with North Baja as a result of the open season for the expansion of Sempra's ECA Terminal.[12] The termination of these precedent agreements reduces the combined northbound capacity under precedent agreements to 2,384,000 Dth per day, which is 548,000 Dth per day less than the proposed 2,932,000 Dth per day northbound physical capacity of North Baja's system after the Phase II facilities are in-service. Also, in its July 7, 2006 data response, North Baja notes that it anticipates that the "market will continue to pursue the import of LNG into Mexico and North Baja will provide pipeline capacity to shippers that succeed in the ECA open season."[13]

16. In addition to shippers entering into precedent agreements for the mainline services proposed by North Baja, two shippers have entered into precedent agreements for firm incremental transportation service on the two new laterals that North Baja proposes to construct. Specifically, FPL Energy, LLC (FPL Energy) has executed a precedent agreement with North Baja for 120,000 Dth per day of firm transportation capacity on North Baja's proposed BEI Lateral for a term of 20 years. FPL Energy intends to use its capacity on the BEI Lateral to serve its affiliate's Blythe Energy Facility I electric generating facility.

17. Also, the Imperial Irrigation District has executed a precedent agreement with North Baja for 110,000 Dth per day of firm transportation capacity on North Baja's proposed IID Lateral for a term of 20 years. The Imperial Irrigation District intends to use its capacity on the IID Lateral to supply natural gas for its El Centro Generating Station in El Centro, California.

18. As stated, *supra*, North Baja proposes to place the BEI Lateral into service in June 2007 as part of Phase I of its expansion, and to place the IID Lateral into service in June 2009 during Phase I-A of its expansion.

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[12] North Baja's July 7, 2006 Data Response at Question 1.

[13] *Id.*

4. Rate Proposal

a. Mainline Expansions

19. North Baja proposes to use its currently effective recourse rates under its existing Rate Schedules FTS-1 and ITS-1 as initial recourse rates for the mainline expansion services.[14] North Baja, however, requests that the Commission make a predetermination that, absent a significant change in circumstances, the costs of the mainline expansion facilities may be rolled into North Baja's existing system rates in North Baja's next general NGA section 4 rate proceeding.

20. North Baja states that it calculated the incremental cost-of-service for the Phase I and Phase II mainline expansions using the assumptions underlying its currently effective maximum recourse rates, including the 70/30 percent debt/equity capitalization ratio, the 14 percent rate of return on equity, a 3.33 percent annual depreciation accrual rate, and the straight-fixed-variable rate design. North Baja explains that the proposed mainline expansion will increase its annual cost-of-service by 159 percent, but if the costs of the expansion are rolled-in, North Baja's rates will decrease substantially because of the magnitude of the expansion billing determinants.

21. Specifically, North Baja estimates that the annual cost-of-service after construction of its Phase I and Phase II mainline expansions (including the pre-expansion system costs) will total $64,033,917, and that the expanded system will have a design capacity of 3,147,000 Dth per day, resulting in a 100 percent load factor equivalent rate of $0.05576 per Dth.[15] In addition, based on North Baja's estimates, the annual cost-of-service after construction of its Phase I mainline expansion (including its pre-expansion system costs) will total $26,613,952, and the expanded system will have a design capacity of 799,000 Dth per day, resulting in a 100 percent load factor equivalent rate of $0.09131 per Dth.

22. Thus, North Baja asserts that rolling in its proposed Phase I and II expansion costs and billing determinants in its next section 4 rate proceeding would result in a reduction of its current recourse rate of $0.13211 per Dth to $0.05576 per Dth. North Baja's

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[14] North Baja's currently effective capacity reservation rate is $3.99840 per Dth and its commodity rate is $0.00066 per Dth, or a 100 percent load factor rate of $0.13211 per Dth. *See* Pro Forma Fifth Revised Sheet No. 4 at Attachment 3C of North Baja's August 7, 2006 Data Response.

[15] North Baja's July 7, 2006 Data Response, Revised Exhibit N at 10 (correcting mathematical errors in its application). The calculated firm service capacity reservation rate would be $1.69028 per Dth and the commodity rate would be $0.00019 per Dth.

request for a predetermination supporting rolled-in rate treatment is based upon this reduction in existing system rates resulting from the expansion revenues exceeding the cost-of-service.

23. For the Phase I service, Coral has elected to pay a negotiated rate and Sempra LNG has retained the option to pay either a negotiated rate, a recourse rate, or a combination thereof. For Phase II service, Chevron USA, Coral, and Sempra LNG have elected to pay the recourse rate.

b. <u>Expansion Laterals</u>

24. North Baja proposes to charge incremental rates for the new lateral services. While all service on North Baja's system, including the new lateral services, will be provided under existing Rate Schedules FTS-1and ITS-1, North Baja proposes new lateral rate schedule designations of Rate Schedule FTS-1 LAT-1 (LAT-1) for service on the IID Lateral, and Rate Schedule FTS-1 LAT-2 (LAT-2) for service on the BEI Lateral, to specify the incremental recourse rates for service on the laterals.

25. North Baja proposes incremental recourse rates for LAT-1 service on the IID Lateral designed on a straight-fixed variable rate design using a $7,455,537 annual cost-of-service and annual demand determinants of 1,320,000 Dth (110,000 Dth per day design capacity times 12) and annual commodity determinants of 38,142,500 Dth. The cost-of-service reflects the 70/30 percent debt/equity capitalization ratio, 14 percent rate of return on equity, and 3.33 percent annual depreciation accrual rate underlying North Baja's current rates. North Baja proposes a reservation rate of $5.63989 and a commodity rate of $0.00028 for its LAT-1 firm recourse rates, and an interruptible rate of $0.01195 based on 100 percent load factor derivative of its firm rates.[16]

26. North Baja proposes incremental recourse rates for LAT-2 service on the BEI Lateral designed on a straight-fixed variable rate design using a $552,952 annual cost-of-service and annual demand determinants of 1,440,000 Dth (120,000 Dth per day design capacity times 12) and annual commodity determinants of 41,610,000 Dth. The cost-of-service reflects the 70/30 percent debt/equity capitalization ratio and 14 percent rate of return on equity underlying North Baja's current rates, and a 5.00 percent annual depreciation accrual rate. North Baja proposes a reservation rate of $0.36242 and a commodity rate of $0.00003 for its firm LAT-2 recourse rates, and an interruptible rate of $0.18570 based on a 100 percent load factor derivative of its firm rates.[17]

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[16] Pro Forma Fifth Revised Sheet No. 4 included in North Baja's August 7, 2006 Data Response as Attachment 3C.

[17] *Id.*

27. North Baja states that both lateral shippers, FPL and the Imperial Irrigation District, have elected to take service under long-term fixed negotiated rates. North Baja asserts that each had the opportunity to receive service at the applicable recourse rate. North Baja states that pursuant to Commission policy, it will file tariff sheets reflecting the names of these shippers, along with the negotiated rates, the applicable receipt and delivery points, and the quantities to be transported under each contract, prior to providing service on the laterals.

B. Docket No. CP01-23-003

28. North Baja currently holds a Presidential Permit under section 3 of the NGA to construct, operate, and maintain certain border crossing facilities at the international border near Yuma, Arizona, at the current terminus of North Baja's system.[18] These border crossing facilities consist of approximately 500 feet of 30-inch pipeline commencing at the center of the All American Canal approximately 500 feet from the international boundary between the United States and Mexico near Mexicali, Mexico and interconnecting with the natural gas pipeline facilities of Gasoducto Bajanorte in Mexico. These border crossing facilities are designed to allow for the exportation of natural gas to Mexico. North Baja requests that the Commission modify its existing Presidential Permit and section 3 authority to allow for the importation of natural gas and to reflect the proposed modifications to the border facilities.

II. Notice, Interventions, and Comments

29. Public notice of North Baja's application was published in the *Federal Register* on March 1, 2006.[19] Sixteen parties filed timely, unopposed motions to intervene, and some intervenors, as noted below, included comments in their motions to intervene.[20] In addition, two parties filed motions to intervene out-of-time. We will grant these untimely motions to intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.

30. In its motion to intervene, Sempra LNG requests that the Commission condition any certificate authorization granted to North Baja upon the requirement that North Baja

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[18] *See North Baja Pipeline LLC,* 98 FERC ¶ 61,020, *order on reh'g,* 99 FERC ¶ 61,028 (2002).

[19] 71 Fed. Reg. 10,489 (2006).

[20] Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2006). The parties to this proceeding are listed in the appendix to this order.

make limited NGA section 4 filings to adjust its existing mainline recourse rate at the times it places the Phase I and Phase II facilities into service. North Baja filed an answer to Sempra LNG's request. Our procedural rules generally do not permit answers to comments.[21] However, we may waive this rule for good cause shown, and we do so in this instance to clarify the issues under consideration. With the exceptions noted below, the comments set forth in the motions to intervene are addressed in the discussion section of this order.

31. Two parties and one commentor, the Imperial County Air Pollution Control District (Imperial County APCD), raised concerns related to the environmental aspects of North Baja's proposed expansion. Specifically, the Morongo Band of Mission Indians (Morongo Band) voiced concerns regarding indirect impacts associated with the future development and construction of new high-voltage electric transmission lines and rights-of-way associated with potential natural gas-fueled electric energy production resulting from North Baja's expansion. In its late intervention, Imperial County, California (Imperial County) requested that the Commission condition authorization of North Baja's expansion upon North Baja's agreement to cooperate with Imperial County to identify all environmental concerns and mitigate any impacts associated with North Baja's facilities. The Imperial County APCD raised issues related to air quality and emissions, particularly of power plants.

32. The concerns raised by the Morongo Band, Imperial County, and Imperial County APCD are environmental matters that are best considered in the context of our environmental review. Consequently, we will defer consideration of these issues and address them in a subsequent order that fully examines the environmental aspects of North Baja's proposed expansion.

III. <u>Discussion</u>

33. Because North Baja's application pertains to facilities used to transport natural gas in interstate commerce and to import and export natural gas, the construction and operation of these facilities are subject to the jurisdiction of the Commission and to the requirements of NGA sections 3 and 7(c).

[21] 18 CFR § 385.214 (2006)

A. <u>Pipeline Proposal in Docket No. CP06-61-000</u>

1. <u>Application of the Certificate Policy Statement</u>

34. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.[22] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our 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, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

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

a. <u>Subsidization and Impact on Existing Customers</u>

36. As discussed below, North Baja's existing customers will not subsidize the proposed expansion.[23] The costs of the BEI and IID Laterals will be recovered through incremental rates, and the proposed rolled-in rates provide adequate revenues to cover the

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[22] *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).

[23] We note that North Baja has indicated that all of its existing customers currently receive service pursuant to long-term, fixed negotiated rates that will be unaffected by the proposed expansion project. North Baja's Application at 13.

cost-of-service for the proposed mainline facilities. The Phase I and II mainline facility costs are underpinned by binding precedent agreements with the Phase I shippers and Phase II shippers,[24] as well as contributions in aid of construction by the existing North Baja shippers who have elected to reverse the primary path of their transportation contracts.

37. As previously noted, North Baja proposes to roll the costs and billing determinants associated with the proposed mainline expansion into its existing recourse rates in its first NGA section 4 general rate proceeding after the proposed facilities are placed into service. We find that North Baja's proposal to roll into future rates the mainline expansion costs is consistent with the Commission's Certificate Policy Statement regarding rolled-in rates. North Baja's revised Exhibit N shows that in the first year that the Phase I and II facilities will be in service, the total projected revenues, including the mainline expansion revenues, at the existing recourse rate will exceed the total cost-of-service by approximately $87.5 million.[25] Further, North Baja demonstrates that rolling the costs and volumes of the mainline expansion into North Baja's existing rates will reduce its system rate on a 100 percent load factor basis from $0.13211 per Dth to $0.05576 per Dth.[26] Therefore, we conclude that the expansion can proceed without subsidies from North Baja's existing shippers, and that North Baja has met the threshold test of the Certificate Policy Statement of no subsidization by existing customers.[27]

38. Accordingly, we will conditionally approve as appropriate rolled-in rate treatment for the mainline expansion costs in North Baja's next section 4 rate proceeding. Our approval is conditioned on there being no material changes in the relevant facts and

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[24] As indicated previously, Phase II is not fully subscribed at this time.

[25] Revised Exhibit N at 1. North Baja assumes that the expansion is fully subscribed at recourse rates. However, even if the currently unsubscribed Phase II northbound capacity of 548,000 Dth per day remains unsubscribed, revenues would still exceed expenses by approximately $61 million using the 2,599,000 Dth of capacity currently under the binding precedent agreements.

[26] Revised Exhibit N at 10. Similarly, rolling in the expansion costs and volumes of only the Phase I expansion would reduce North Baja's rate on a 100 percent load factor basis from $0.13211 per Dth to $0.09131, and the revenues from the Phase I expansion would exceed the costs by approximately $12 million.

[27] No existing North Baja customer has commented or expressed a concern that rolled-in rate treatment is inappropriate.

circumstances associated with the project at the time North Baja proposes to roll in the subject costs.[28]

39. Further, the proposed project should not adversely impact the service North Baja's existing customers receive. North Baja has taken steps to mitigate any potential adverse impacts on its existing customers. Specifically, as stated, *supra*, North Baja provided all of its existing firm transportation customers with an opportunity to reverse their primary southbound service path to northbound service when the regasified LNG becomes available, to enable existing shippers to benefit from the expansion proposal and the new gas supply source.[29] Given that proposed expansion will offer operational and supply benefits to those existing customers choosing to become expansion shippers, and will not change or affect North Baja's ability to continue to provide the current north-to-south service, it should not result in a degradation of service to existing customers or otherwise affect existing customers.

b. <u>Impact on Existing Pipelines and Their Customers</u>

40. North Baja's expansion will not adversely impact other pipelines and their customers. The proposed expansion will benefit existing shippers in the Southwest by providing a new supply of natural gas to the region. In its motion to intervene, New Harquahala Generating Company, LLC (New Harquahala), the owner of a gas-fired electric generating facility in Maricopa County, Arizona, states that reversing the flow of the North Baja system to bring gas into the United States would only benefit New Harquahala as long as the imported gas quality meets its operational requirements. New Harquahala requests that the Commission ensure that North Baja's new facilities and modifications incorporate adequate measures to control the quality of the natural gas delivered by North Baja's new facilities.

41. North Baja does not propose in this proceeding to modify its existing gas quality specifications,[30] nor does New Harquahala identify or suggest any deficiencies with

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[28] *See, e.g. Southern Natural Gas Co.*, 100 FERC ¶ 61,281 at 62,214 (2002). *See also CenterPoint Energy Gas Transmission Co.*, 109 FERC ¶ 62,118 at 64,223 (2004) and *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267 at P 48 (2003).

[29] North Baja's Application at 8 and 13-14.

[30] However, we note that the Phase I and II mainline service precedent agreements provide that North Baja will use commercially reasonable efforts to file for and adopt gas quality standards consistent with the most stringent downstream pipeline, and emphasize that all shippers will be required to meet the same gas quality specifications on its pipeline as set forth in its tariff. *See* North Baja's Application, Exhibit I, section 6(p) of precedent agreements.

North Baja's existing gas quality standards. In addition, New Harquahala has not identified the particular gas quality standards necessary to meet its operational requirements. Based upon these facts, we find no reason at this time to require North Baja to modify its tariff to include provisions to control the quality of the re-gasified LNG North Baja will transport to California and Arizona. If, in the future, North Baja decides to modify its tariff, it must do so using procedures consistent with those outlined in the Commission's recent *Policy Statement on Provisions Governing Natural Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*.[31]

42. SoCalGas, in its joint motion to intervene and comments with San Diego Gas & Electric Company, requests that the Commission require North Baja to submit a comprehensive Operational Balancing Agreement for the proposed interconnection between North Baja and SoCalGas that is consistent with the reliability of system operations of the proposed expansion. In its July 7, 2006 data response, North Baja stated that it was in "active discussions" with SoCalGas about an Interconnection Agreement and an Operational Balancing Agreement, and anticipated execution of mutually acceptable agreements prior to the in-service dates.[32] There is no Commission requirement that pipelines have operational balancing agreements at customer receipt and delivery points. Accordingly, we see no need to intervene in the negotiations between SoCalGas and North Baja on this matter.

43. Based upon the above discussion, we find that North Baja's proposed expansion does not adversely affect other pipelines and their customers.

c. <u>Impact on Landowners</u>

44. North Baja states that with the exception of the IID and BEI Laterals and the Blythe Meter Station, virtually all of the construction will take place along North Baja's existing right-of-way or in already-disturbed compressor station or meter station areas. In order to keep the public informed about its project, North Baja states that it has conducted consultations, held open houses, posted information in local newspapers and local libraries, provided direct mailings to landowners, established a website, and established a single point of contact. North Baja states that it expects very limited, if any, use of eminent domain. We conclude that North Baja has made sufficient efforts to minimize adverse impacts on landowners, particularly, by siting most of the expansion facilities adjacent to existing facilities to reduce the potential need for the use of eminent domain.

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[31] 115 FERC ¶ 61,235 (2006).

[32] North Baja's July 7, 2006 Data Response at Question 2.

d. Balancing of Public Benefits Against Adverse Effects of Project

45. We find that any potential adverse effects of North Baja's project are outweighed by the substantial benefits of the project. North Baja's proposed expansion project will provide the southwest region of the United States with a new source of natural gas -- LNG supplies. As North Baja explains in its application, increased imports of LNG are critical to replacing declining North American natural gas production, and will benefit the public by providing California and Arizona markets with another transportation and supply alternative to gas delivered from the Anadarko, Permian and San Juan supply basins by El Paso.[33] In addition, the introduction of new LNG supplies from Mexico into California and Arizona, competing with domestic supplies, should have the effect of lowering the market price of natural gas in southern California and Arizona, benefiting all gas consumers in that area.[34]

46. These project benefits are reflected by North Baja's showing of market demand and need for the project. North Baja has demonstrated a need for its proposed expansion by submitting precedent agreements for long-term firm transportation service for the entire Phase I capacity, as well as for the capacity of the BEI Lateral and IID Lateral proposed in Phases I and I-A, respectively. In addition, North Baja has submitted long-term firm precedent agreements for most of the capacity of North Baja's system after the Phase II facilities are constructed. In 2010, at the anticipated time the Phase II facilities will be in service, North Baja will have 2,384,000 Dth per day of firm northbound transportation capacity under contract out of a total northbound pipeline capacity of 2,932,000 Dth per day. North Baja states that it has designed its expansion to accommodate the combined deliverability of the ECA and Mar Adentro LNG terminals in 2010, less anticipated deliveries within Mexico. In its August 7, 2006 data response, North Baja states that it anticipates executing precedent agreements with any shippers that ultimately acquire capacity in the ECA expansion.[35] Thus, it is reasonable to expect that Phase II of North Baja's expansion ultimately will be fully subscribed.

e. Policy Statement Conclusion

47. As discussed above, we find that North Baja's expansion can proceed without subsidies to existing customers, and will not adversely affect other pipelines or their customers. Further, we find that North Baja has made efforts to minimize impacts on

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[33] North Baja's Application at 15-16.

[34] *Id.* at 17.

[35] North Baja's August 7, 2006 Data Response at Question 1.

landowners. The expansion will provide additional supplies of natural gas into the Arizona and California markets. Therefore, based on the benefits of North Baja's expansion project and the lack of any identified adverse effect on existing customers, other pipelines, or landowners, and consistent with the Certificate Policy Statement and section 7 of the NGA, we preliminarily find that, pending completion of our environmental review, approval of North Baja's expansion is in the public convenience and necessity.

2. Rate Issues

a. Negotiated Rates

48. The Commission establishes only initial recourse rates in certificate proceedings and does not make determinations regarding specific negotiated rates for proposed services.[36] However, the Commission's *Alternative Rate Policy Statement*[37] requires pipelines entering into negotiated rate agreements to provide cost-based recourse rates. To the extent that North Baja enters into negotiated rates for its proposed services which are lower than its recourse rates, the *Alternative Rate Policy Statement* provides that the pipeline is at risk for any resulting undercollection of project costs and will not be permitted to reallocate such unrecovered costs to any recourse rate shippers.

b. Mainline and Lateral Recourse Rates

49. As stated, *supra*, North Baja proposes to use its currently effective recourse rates under its existing Rate Schedules FTS-1 and ITS-1 as initial recourse rates for the mainline expansion service, and that in Phase I, Sempra LNG has retained the option to pay either the negotiated rate or the recourse rate, while all Phase II shippers under precedent agreement have elected to pay the recourse rate. Further, as discussed above, we have preliminarily determined that, absent a significant change in circumstances,

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[36] *CenterPoint Energy -- Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007 at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028 at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052 at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360 at n.19 (2002).

[37] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement)*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (1996).

North Baja may roll the costs and billing determinants of its mainline expansion facilities into its systemwide rates in its next general section 4 rate proceeding.

50. In addition, the Commission finds that North Baja's proposed incremental recourse rates for the LAT-1 and LAT-2 services on the IID and BEI Laterals are cost-based rates that fully recover the costs of the proposed construction and are based on actual design capacities. Moreover, no party protested the incremental rate treatment or the proposed recourse rates. The Commission approves the proposed incremental recourse rates for the LAT-1 and LAT-2 services on the IID and BEI Laterals.

51. The Commission will require North Baja to file in compliance with this order, actual tariff sheets in accordance with section 154.207 of the Commission's regulations between 30 and 60 days prior to placing the facilities into service.[38] In addition, because we are approving incremental rates for the IID and BEI Laterals, North Baja will be required to maintain its accounts for these facilities in accordance with section 154.309 of the Commission's regulations, which applies to incremental expansions.[39]

c. Sempra LNG's Request for Limited Section 4 Filing Condition

52. As discussed above, given that North Baja has demonstrated that rolling the cost of its mainline expansion into its existing system rates will result in a reduction in its mainline recourse rates, we have preliminarily determined that, absent a significant change in circumstances, North Baja may roll the costs and billing determinants of its mainline expansion facilities into its systemwide rates in its next general section 4 rate proceeding. Sempra LNG supports this predetermination for rolled-in rate treatment of the expansion facilities. However, Sempra LNG requests that the Commission condition, pursuant to section 7(e) of the NGA, any certificate authorization granted to North Baja upon the requirement that North Baja file, at the time it places the Phase I and Phase II facilities into service, limited NGA section 4 applications to roll in the costs of the Phase I and Phase II facilities and adjust its mainline firm recourse rates.

53. In support of its request, Sempra LNG states that while North Baja has indicated that the proposed Phase I and Phase II mainline expansions will result in an approximately 57 percent decrease in North Baja's mainline recourse rate, North Baja has made no commitment in its application regarding the timing of its next section 4 proceeding. Thus, asserts Sempra LNG, until North Baja files a section 4 rate case, it will significantly overrecover its cost-of-service. Sempra LNG argues that the

[38] 18 C.F.R. § 154.207 (2006).

[39] 18 C.F.R. § 154.1 and § 154.112 (2006).

Commission has the authority under NGA section 7(e) to condition any certificate authorization granted to North Baja on North Baja's filing limited section 4 rate filings to roll in the expansion costs and adjust its mainline recourse rates. Sempra LNG further maintains that the prompt downward adjustment of North Baja's mainline recourse rates provided by the requested certificate condition, giving expansion and other customers the benefits of rolled-in rate treatment and preventing significant cost overrecovery, is consistent with the public convenience and necessity.

54. In its answer, North Baja argues that the Commission should deny Sempra LNG's request for a certificate condition requiring it to make NGA section 4 rate filings upon the completion of each phase of the expansion. North Baja asserts that the United States Court of Appeals for the District of Columbia has previously rejected the Commission's authority to impose such rate conditions on a section 7 certificate in *Panhandle Eastern Pipe Line Co. v. FERC,*[40] *Northern Natural Gas Co. v. FERC,*[41] *and Public Service Comm'n v. FERC.*[42] North Baja further asserts that the Commission has applied these cases in prior proceedings to reject the same condition requested by Sempra LNG.[43] North Baja notes that Sempra LNG has failed to file any case support for its proposition that the Commission has the authority to impose the requested condition under section 7(e) of the NGA.

55. The Commission denies Sempra LNG's request that the Commission condition North Baja's certificate on North Baja's filing of limited section 4 applications to adjust its mainline recourse rates at the time it places the expansion facilities into service. Contrary to Sempra LNG's assertion, and as set forth by North Baja in its answer, the Commission does not have the authority under section 7(e) to condition a certificate in this manner.

56. In *Panhandle*, the court struck down a condition imposed in a section 7 proceeding requiring the pipeline to flow through transportation revenues from the newly authorized service to gas resale customers to reduce their rates by crediting the revenues to the purchased gas account. In analyzing the scope of the Commission's conditioning power under section 7(e), the court ruled that the section 7 conditioning authority does not allow the adjustment of previously approved just and reasonable rates for services not under

[40] 613 F. 2d 1120 (D.C. Cir. 1979) (*Panhandle).*

[41] 827 F.2d 779 (D.C. Cir. 1987) (*en banc*) (*Northern Natural*).

[42] 866 F.2d 487 (D.C. Cir. 1989) (*PSC v. FERC*).

[43] North Baja cites *Mississippi Canyon Gas Pipeline, LLC*, 87 FERC ¶ 61,115 (1999) and *Pacific Gas Transmission Co.*, 65 FERC ¶ 61,005 (1995).

consideration in the certificate proceeding.[44] The court found that an extension of the price adjustment powers of section 7(e) to previously approved rates for services not before the Commission in the certificate proceeding would emasculate the role of section 5, dilute the protections provided in sections 4 and 5 against regulatory lag and rate instability, and eliminate the section 5 protections to be invoked prior to a rate reduction order.[45]

57. The *Panhandle* court found that "[s]ection 7's broad conditioning power must be read in conjunction with sections 4 and 5," [46] so that the Commission cannot use conditioning authority under section 7(e) to disturb Congress' allocation in section 4 and 5 of the burden of proof with respect to the lawfulness of an interstate pipeline's rates or otherwise undercut or eliminate the rights and protections accorded natural gas companies by section 5. In *Panhandle* and the other court cases, the court ruled that the particular condition imposed in the certificate proceedings shifted the burden of proof from the Commission (under section 5) to the pipeline (under section 4) to show affirmatively that its existing rates continued to be just and reasonable.[47]

58. *Panhandle* and the cases relying on *Panhandle*, as North Baja submits, do not lose their force in the face of Sempra LNG's argument that a section 4 filing is required because North Baja will recover in excess of its cost of service. That argument implies that section 7(e) empowers the Commission to hold the line on a pipeline's rate of return, and not merely the rates for the proposed service. The court specifically rejected this construction of section 7(e) when it reaffirmed *Panhandle* in *Northern Natural.* [48]

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[44] *Panhandle,* 613 F.2d at 1129, 1130, 1132 and 1133.

[45] *Id.* at 1129 and 1132. The court found that the Commission had "implicitly determined that permitting Panhandle to retain these transportation revenues would allow it to be 'unjustly enriched at the expense of consumers,'" thereby circumventing the hearing and justness and reasonableness findings required under section 5 for the Commission to adjust existing rates. *Id.* at 1128 (citing the underlying Commission decicision).

[46] *Panhandle*, 613 F.2d at 1128-29.

[47] *Id.* at 1129.

[48] *Northern Natural,* 827 F.2d 779 at 791-92. In *Northern Natural,* the court applied *Panhandle* to another revenue-crediting condition, similar to the one in *Panhandle*, imposed upon Northern Natural's certificate for discount resale service, and vacated such condition as violating the rule in *Panhandle* for the same reasons.

59. The case law has made clear that the fact that the introduction of the expansion services, absent the rolling in of their costs, will result in North Baja earning more than its rate of return, does not justify the Commission requiring the adjustment of existing rates through either a mandated section 4 filing requirement, as requested in this case and imposed in *PSC v. FERC*,[49] or a revenue-crediting provision, as in *Panhandle*. As the court stated in *Panhandle*:

> [T]he essence of the Commission's order is the adjustment of previously approved rates to reach the regulatory end of preventing any increase in Panhandle's profits . . . from receipt of new transportation revenues. Assuming this questionable regulatory objective to be valid, we believe the means of implementing it used by the Commission is impermissible. While the Commission may consider a pipeline's rate of return in setting prices for certificated services, we do not believe FERC may order changes in other, previously approved, rates in the name of preventing a possible increase in the rate of return. Allowing the Commission to do so . . . significantly undercuts the policies of §§ 4 and 5 as we have here outlined.[50]

60. Similarly, the *Northern Natural* court held that the Commission may not use section 7(e) to "hold the line" on rates of return, finding that "nothing in the Court's [*Atlantic Refining Co. v Public Service Comm'n*] opinion suggests that the Commission may use section 7 to 'hold the line' on rates of return as opposed to rates; . . ."[51]

61. Moreover, the fact that North Baja itself has acknowledged it will be overrecovering its cost-of-service, and has already proposed to roll in the mainline expansion costs to lower system rates when it files its next rate case, does not justify the Commission's dictating in a section 7 proceeding the timing of that rate case and the rolling in of costs. Again, the Commission must invoke its section 5 authority if it

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[49] In *PSC v. FERC*, the court struck down a condition similar to the condition Sempra LNG seeks here. 866 F.2d at 490-91. There, in a section 4 proceeding, the Commission approved the pipeline's proposal to retain its original rates, subject to the condition that it file a rate case under section 4 every four years, in light of the fact that the company's rate base was declining and could lead to an unreasonable return on equity.

[50] *Panhandle*, 613 F.2d at 1130.

[51] *Northern Natural*, 827 F.2d at 791, *quoting Atlantic Refining Co. v. Public Service Comm'n*, 360 U.S. 378, 392 (1959).

believes current rates should be lowered or adjusted before the pipeline decides to revise its rates in a section 4 proceeding. Regardless of North Baja's statements that the proposed mainline expansions will result in a reduction in the mainline recourse rate, requiring North Baja to make a section 4 filing to effectuate that rate reduction would impermissibly shift the burden to North Baja to demonstrate the lawfulness of its existing non-expansion mainline recourse rates, just as the court ruled the condition would in *PSC v. FERC*.

62. Finally, North Baja is correct that the Commission has previously rejected the condition requested by Sempra LNG in other cases. In *Mississippi Canyon Gas Pipeline, LLC*, [52] the Commission rejected arguments that, in view of increased throughput from an expansion and the prospect of the pipeline's earning in excess of its return on equity, the Commission should require the pipeline to file a section 4 rate case to reflect the expansion volumes. The Commission stated that it "has not required a pipeline to file a concurrent Section 4 rate proceeding as a condition for issuing a certificate to provide additional service."[53] In addition, in *Pacific Gas Transmission Co.*, the Commission refused to require the pipeline to file a section 4 rate case to address the impact of an expansion on the pipeline's interruptible rates, finding that "the Commission lacks authority to do that."[54]

B. <u>Amendment of Presidential Permit in Docket No. CP01-23-003</u>

63. North Baja requests that the Commission modify its existing Presidential Permit and section 3 authorization to allow for the importation of natural gas from Mexico and to reflect the proposed new facilities at the international border, namely the 48-inch mainline looping.

64. On April 25, 2006, as required by Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A,[55] the Commission submitted a draft of an amended Presidential Permit for North Baja to the Secretaries of Defense and State, informing each of North Baja's application in this proceeding and seeking their recommendations on the proposed amendment to North Baja's existing Presidential

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[52] 87 FERC ¶ 61,115 (1999).

[53] *Id.* at 61,477, *citing Northern Natural* and *Panhandle.*

[54] 65 FERC ¶ 61,005 at 61,040 (1995), *citing PSC v. FERC.*

[55] Executive Order No. 10485 requires that the commission obtain the favorable recommendations of the Secretaries of State and Defense prior to issuing a Presidential Permit.

Permit. Replies on behalf of the Secretaries of Defense and State were received on August 28 and 29, 2006, respectively. The designees of the Secretaries of Defense and State concurred with the issuance of the amended permit. The designee of the Secretary of Defense states that the Secretary has no objection to the issuance of the amended permit, subject to approval and validation of any associated Army Corps of Engineers permit process.

65. Since the proposed modifications to North Baja's border facilities will enable the facilities to be used to import, as well as export, natural gas from a foreign country, the proposal requires approval of the Commission under section 3 of the NGA. The Commission's authority over construction and operation of facilities under section 3 includes the authority to apply terms and conditions as necessary or appropriate to ensure that the proposed construction and siting are in the public interest. Section 3 provides that the Commission shall issue such order on application "unless, . . ., it finds that the [proposal] will not be consistent with the public interest."[56]

66. Based on our review of North Baja's application, we find that North Baja's proposal to modify its natural gas export facilities to accommodate the importation of regasified LNG from Mexico will facilitate growing international trade between the United States and Mexico and provide additional supplies of natural gas to the California and Arizona markets. Accordingly, in light of our preliminary approval of North Baja's expansion proposal in Docket No. CP06-61-000 pending completion of the environmental review, and the lack of adverse comment by the Secretaries of Defense and State, we preliminarily find that the issuance of an amended Presidential Permit and NGA section 3 authorization to modify North Baja's border facilities, as proposed, will not be inconsistent with the public interest, subject to the conditions set forth in the amended Presidential Permit, and the completion of our environmental review.

C. Environmental Analysis

67. On August 30, 2005, in Docket No. PF05-14-000, the Commission and the California State Lands Commission (as state co-lead agency) jointly issued a notice of intent to prepare a joint environmental impact statement/report (EIS/EIR) for North Baja's proposed Pipeline Expansion Project. The EIS/EIR will also be used by the U.S. Bureau of Land Management (BLM) as a proposed land use plan amendment.

68. The Commission staff's independent analysis of the issues will be in the EIS/EIR. The draft EIS/EIR has been published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be

[56] 15 U.S.C. § 717b.

allotted for review after the draft EIS/EIR is published. Because of the BLM's proposed land use plan amendment, the comment period will extend for 90 days, rather than the typical 45 days. All comments on the draft EIS/EIR will be considered before recommendations are made to the Commission.

IV. Summary

69. For the reasons discussed above, we reach a preliminary determination, subject to completion of our environmental review that: (1) the benefits of North Baja's expansion will outweigh any potential adverse effects, consistent with the Certificate Policy Statement, and that the expansion is required by the public convenience and necessity; (2) absent a material change in circumstances, the costs associated with North Baja's proposed expansion will qualify for rolled-in rate treatment when North Baja makes its next NGA section 4 rate filing; and (3) the proposed modification of North Baja's Presidential Permit and NGA section 3 authorization is consistent with the public interest.

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

The Commission orders:

(A) A preliminary determination is made that the issuance of a certificate to North Baja under NGA section 7(c), authorizing the construction and operation of the natural gas facilities, as described and conditioned herein and in the application, would, on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

(B) A preliminary determination is made that the requested modification of North Baja's Presidential Permit and authorization pursuant to NGA section 3, as described in the application, would, on the basis of pertinent non-environmental issues, be consistent with the public interest.

(C) The preliminary determination made in Ordering Paragraphs (A) and (B) contemplates issuance, after completion of a pending review of all environmental matters, of a final order by the Commission determining that the proposal is required by the public convenience and necessity, in accordance with the National Environmental Policy Act and NGA sections 3 and 7(c).

(D) Any certificate, authority, or approval issued in a final order in this proceeding will be conditioned on the following:

(1) North Baja’s constructing and making available for service the facilities described herein within four years of a final order in this proceeding, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(2) North Baja’s compliance with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) North Baja’s execution of firm contracts for the capacity levels and terms of service represented in its precedent agreements prior to commencing construction.

(E) A preliminary determination is made that North Baja may roll the costs of its proposed expansion into its systemwide cost-of-service in its next NGA section 4 rate proceeding, provided there are no material changes in the relevant facts and circumstances associated with the project at the time it proposes to roll in the subject costs.

(F) The Commission approves North Baja’s proposed incremental rate treatment for its LAT-1 and LAT-2 services for its IID and BEI Laterals, and the initial recourse rates for LAT-1 and LAT-2 service under Rate Schedules FTS-1 and ITS-1.

(G) North Baja must file actual tariff sheets in accordance with section 154.207 of the Commission’s regulations between 30 and 60 days prior to commencing service on its expansion facilities, as discussed herein.

(H) North Baja must file its negotiated rate contracts or tariff sheets reflecting the essential elements of its negotiated rate agreements not less than 30 days and not more than 60 days prior to commencing service on its expansion facilities.

(I) Sempra LNG’s request that North Baja be required to file limited section 4 rate proceedings at the time it places the expansion facilities into service, as a condition to the certificate, is denied, as discussed in the body of this order.

(J) The comments of Imperial County, the Morongo Band, and ICAPCD will be addressed in a subsequent order that fully examines the environmental aspects of the proposed project.

(K) The motions to intervene out-of-time are granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

North Baja Pipeline, LLC
Docket Nos. CP06-61-000 and CP01-23-003

Parties filing timely motions to intervene:

Blythe Energy, LLC
BP Energy Company
Chevron Global Gas, a Division of Chevron U.S.A., Inc.
ConocoPhillips Company
Coral Energy Resources, L.P.
El Paso Natural Gas Company
Imperial Irrigation District
Morongo Band of Mission Indians
New Harquahala Generating Company, LLC
Nowell Investment Company
Pacific Gas and Electric Company
Salt River Project Agricultural Improvement and Power District
Sempra Energy LNG Marketing Corp.
Southern California Edison Company
Southern California Gas Company and San Diego Gas and Electric Company
Southern California Generation Coalition
Southwest Gas Corporation

Parties filing untimely motions to intervene:

Public Utilities Commission of the State of California
Imperial County, California