128 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ruby Pipeline, L.L.C. Docket No. CP09-54-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued September 4, 2009)

1. On January 27, 2009, in Docket No. CP09-54-000, Ruby Pipeline, L.L.C. (Ruby) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for: (1) a certificate of public convenience and necessity authorizing Ruby to construct and operate a new interstate natural gas pipeline system extending from the Opal Hub in Wyoming to interconnections with the facilities of Pacific Gas and Electric Company (PG&E), Gas Transmission Northwest Corporation (GTN), and Tuscarora Gas Transmission Company (Tuscarora) in the vicinity of Malin, Oregon; (2) a blanket certificate under Part 157, subpart F, of the Commission's regulations authorizing Ruby to construct, operate, and abandon certain facilities and services; and (3) a blanket certificate under Part 284, subpart G, of the Commission's regulations authorizing Ruby to provide open-access transportation services pursuant to the *pro forma* tariff for which Ruby also seeks approval. The Ruby pipeline will have a capacity of 1,500,000 dekatherms (Dth) per day. Ruby anticipates placing the pipeline into service by March 2011.

2. In this order, we reach a preliminary determination supporting approval of Ruby's proposal, as specifically conditioned below. 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 Ruby's proposal depends on a favorable environmental analysis.

I. Background and Proposal

3. Ruby, a limited liability company organized and existing under the laws of the State of Delaware, is a wholly owned indirect subsidiary of the El Paso Corporation with its principal place of business located in Colorado Springs, Colorado. Ruby is authorized to do business in the States of Wyoming, Idaho, Nevada, Utah, and Oregon. Currently, Ruby neither owns nor operates interstate pipeline facilities. Upon receipt of the requested authorizations, Ruby will become a natural gas company within the meaning of section 2(6) of the NGA and will be subject to the jurisdiction of the Commission under the NGA.[1]

4. In early 2007, Ruby and PG&E began negotiations for the development of a project to bring Rocky Mountain gas supplies to the Malin Hub. Subsequently, on December 20, 2007, PG&E executed a precedent agreement for 375,000 Dth per day of firm transportation capacity from receipt points near the Opal Hub in Wyoming to a delivery point near the Malin Hub in Oregon.[2] PG&E reserved capacity for both its Core Gas Supply and Electric Fuels Supply business divisions.[3] Ruby then conducted an initial open season from February 15 to April 18, 2008, in which Ruby offered both recourse and negotiated rate options.[4] Upon completion of the initial open season Ruby

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[1] On July 27, 2009, El Paso Corporation announced that Global Infrastructure Partners had purchased a 50 percent equity interest in the Ruby Pipeline Holding Company, LLC, which will own 100 percent of Ruby Pipeline, LLC.

[2] On November 7, 2008, the California Public Utilities Commission (CPUC) issued a *Decision Approving Gas Transportation Arrangements* in Docket No. D.08-11-032 (*CPUC Decision*) approving PG&E's precedent agreements with Ruby and the full recovery of the capacity costs from PG&E's core electric and gas ratepayers. The CPUC stated "that it is in the public interest to grant PG&E's application because (1) PG&E has a need to diversify away from its heavy reliance on declining Canadian gas supplies; and (2) the proposed Ruby Pipeline transportation arrangements provide a reasonable and cost effective means for doing so." *CPUC Decision* at 3.

[3] Ruby permitted PG&E to combine the quantities from its two divisions to qualify PG&E as an anchor shipper because the two business units were divisions of one company and not separate companies.

[4] During the open season all potential shippers were given the opportunity to bid and qualify for anchor shipper rates and terms based upon the size and length of their contractual commitment.

entered into precedent agreements for 1,222,857 Dth per day of firm capacity. Ruby conducted a second open season from September 15 to October 10, 2008. The primary purpose of the second open season was to make available capacity that was not subscribed in the initial open season due to varying start dates and ramp-up provisions in the executed precedent agreements. However, no additional precedent agreements were executed. Ruby continues to post a "Notice of Available Capacity" on its website.

5. Altogether, Ruby's open seasons yielded 14 precedent agreements under negotiated rates for a total of 1,222,857 Dth per day of firm transportation capacity for terms ranging from 5 to 15 years. In a May 20, 2009 data response, Ruby stated that "Shipper A" notified Ruby that it would not exercise its option for 125,000 Dth per day of capacity out of its total of 200,000 Dth per day of capacity. Thus, the total capacity under the precedent agreements is now 1,097,857 Dth per day. The shippers and their respective terms and volumes are listed in Appendix A to this order.

6. Ruby's proposed facilities consist of: (1) a 42-inch-diameter mainline commencing at the Opal Hub in Lincoln County, Wyoming, and extending generally westward for approximately 675.2 miles through Lincoln and Uinta Counties in Wyoming; Rich, Cache, and Box Elder Counties in Utah; Elko, Humboldt, and Washoe Counties in Nevada; and Lake and Klamath Counties in Oregon, terminating at the Malin Hub in Klamath County, Oregon (Line No. 300A); and (2) a 2.6-mile-long, 42-inch-diameter lateral pipeline extending from the Malin Hub to an interconnection with PG&E's system at the Oregon/California border.[5]

7. In addition, Ruby proposes to construct four compressor stations along its mainline: (1) the Roberson Creek Compressor Station in Lincoln County, Wyoming, consisting of three 23,000 horsepower electric drive units; (2) the Wildcat Hills Compressor Station in Box Elder County, Utah, consisting of two gas turbine centrifugal compressor units totaling 28,668 horsepower; (3) the Wieland Flat Compressor Station in Elko County, Nevada, consisting of two gas turbine centrifugal compressor units totaling 39,662 horsepower; and (4) the Desert Valley Compressor Station in Humboldt County, Nevada, consisting of a 19,831 horsepower gas turbine centrifugal compressor unit.[6]

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[5] Ruby states that it will utilize internal pipe coating to improve hydraulic efficiency.

[6] Ruby explains that it is evaluating the commercial and technical viability of installing and operating waste heat electric generation facilities at the three proposed gas driven compressor stations, all of which meet the minimum size requirements for waste heat generation identified in the Interstate Natural Gas Association of America's white

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8. Ruby also intends to construct four receipt meter stations: the Diamondville, Pearl Creek, and Emerald Springs Receipt Meter Stations interconnecting with Enterprise Products Partners, L.P., Williams Energy Service, and Colorado Interstate Gas Company (CIG), respectively, at milepost 0.00 of the mainline in Lincoln County, Wyoming;[7] and the Topaz Ridge Meter Station at milepost 5.7 of the mainline in Lincoln County, Wyoming, to receive gas from Questar Overthrust Pipeline Company (Overthrust).

9. Finally, Ruby will install four bi-directional delivery points: the Opal Valley Meter Station, interconnecting with Paiute Pipeline Company (Paiute), will be located at milepost 430 in Humboldt County, Nevada; and the Sapphire Mountain, Turquoise Flats, and Onyx Hill Meter Stations interconnecting with Tuscarora, GTN and PG&E, respectively, will be located at milepost 675.2 in Klamath County, Oregon.

10. Ruby estimates that its proposed facilities will cost $2,963,027,212.

11. Ruby intends to provide open-access transportation service under Part 284 of the Commission's regulations and has submitted a *pro forma* tariff for review. Pursuant to its proposed tariff, Ruby will offer firm transportation service under Rate Schedule FT, interruptible transportation service under Rate Schedule IT, interruptible parking and lending service under Rate Schedule PAL, and interruptible operator swing service under Rate Schedule SS-1. Ruby seeks authority to charge negotiated rates.

II. Notice, Interventions, and Comments

12. Public notice of Ruby's application was published in the *Federal Register* on February 17, 2009.[8] Several parties filed timely, unopposed motions to intervene.[9] In

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paper entitled *Waste Heat Energy Recovery Opportunities for Interstate Natural Gas Pipelines, February 2008* (INGAA White Paper). Ruby anticipates that at least two of these stations will have load factors sufficient to support generation. Ruby declares that once the facilities are in service it will accumulate operational history for each station and evaluate adding waste heat generation to the facilities. Ruby states that it will file a report with the Commission after one full year of operations describing its analysis of the feasibility of waste heat generation. *See* Ruby, January 27, 2009 Application at 23-24.

[7] These three meter stations will be located at CIG's existing King Compressor Station.

[8] 74 Fed. Reg. 7412 (2009).

addition, several parties filed motions to intervene out of time, as identified in Appendix B to this order. We will grant these untimely motions to intervene for good cause shown, as we find that to do so at this stage of the proceeding will not unduly delay, disrupt, or otherwise prejudice this proceeding or other parties.[10]

13. BP Energy Company (BP), a prospective shipper on Ruby's proposed pipeline, states that it supports the project, but filed a limited protest to object to Ruby's inclusion of a cost and revenue true-up in its Electric Power Cost (EPC) tracker.[11] The CPUC also supports Ruby's proposal, but objects to Ruby's requested 14-percent return on equity. Texas Gas Service Company, a division of ONEOK, Inc. (Texas Gas) protests Ruby's proposal, arguing that the new project's potential adverse impacts on existing pipelines in the market and those pipelines' captive customers renders it inconsistent with the Commission's policy statement on the certification of new facilities (Certificate Policy Statement).[12] GTN states that it does not object to Ruby's proposal, but nevertheless expresses concerns that are similar to Texas Gas' objections.

14. Ruby filed a response to the limited protests of BP and the CPUC, the protest of Texas Gas, and the comments of GTN. The CPUC filed an answer to GTN's comments. Although our rules do not permit these types of responsive pleadings,[13] our rules do provide that we may, for good cause, waive this provision.[14] We find good cause to do

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[9] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2009). The parties to this proceeding, including those filing untimely interventions, are listed in Appendix B to this order.

[10] 18 C.F.R. § 385.214(d) (2009).

[11] *See* Ruby Pipeline L.L.C. (Ruby), *Pro Forma* FERC Gas Tariff, Original Volume No. 1, General Terms and Conditions (GT&C), Section 27.6, Original Sheet No. 324.

[12] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[13] 18 C.F.R. § 385.213(a)(2) (2009).

[14] 18 C.F.R. § 385.101(e) (2009).

so in this instance because Ruby's and the CPUC's responses provide information that will assist us in our decision-making. The protests and comments are addressed below.

15. In addition to the protests and comments identified above, several parties and individuals filed protests and comments related to environmental aspects of Ruby's proposal. The Summit Lake Paiute Tribe, Nevada, objects to the routing of Ruby's pipeline between its reservation and the Sheldon National Wildlife Refuge. Several Oregon state agencies request that the Commission apply Oregon's state siting standards.[15] Quality for Animal Life, L.L.C. and Dick Jones raise issues concerning the siting of Ruby's pipeline in Utah. Finally, several individuals protest the location of Ruby's pipeline in the vicinity of Avon and Paradise, Utah.[16] As noted above, this order addresses only non-environmental issues and does not consider or evaluate any of the environmental issues which the proposal may raise. Accordingly, these protests and comments will be addressed during the environmental review process and in a final order in this proceeding which will assess the environmental aspects of Ruby's proposal.

III. <u>Discussion</u>

16. Because Ruby proposes facilities to transport natural gas in interstate commerce, the construction and operation of the facilities are subject to the jurisdiction of the Commission and to the requirements of NGA section 7.[17]

A. <u>Application of the Policy Statement on New Facilities</u>

17. Our Certificate Policy Statement provides guidance as to how we will evaluate proposals for new construction, and establishes criteria for determining whether there is a need for a proposed project and whether it will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, we balance the anticipated public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement

[15] The Oregon agencies are the Department of Energy, Department of State Lands, Department of Land Conservation and Development, Department of Parks and Recreation, and Department of Forestry.

[16] The individuals are Chuck and Patricia Tinney, Mary E. Stock, Robert L. Jones, and LaDawn Hirst.

[17] 15 U.S.C. § 717f (2006).

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.

18. Our 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, and 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 anticipated public benefits against residual adverse effects. This is essentially an economic test. Only when the public benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

19. As a new interstate pipeline Ruby satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Ruby currently has no gas pipeline facilities or customers; thus, there will be no subsidization by existing customers or adverse effects on existing customers.

2. Effects on Existing Pipelines and their Captive Customers

20. Ruby states that its proposed project will have minimal adverse impacts on existing pipelines and their captive customers. Ruby further asserts that its project should have beneficial impacts on these pipelines and customers because it will provide a new source of lower-priced gas supplies from the growing Rocky Mountain supply area. Ruby maintains that many customers in the Pacific Northwest and California depend on western Canadian supplies that are currently experiencing steep declines, which are anticipated to continue into the future.[18] Ruby claims that as a result of its proposal, customers at Malin, Oregon will benefit from supply diversity, competition between gas sellers and gas pipelines, a growing supply of gas, and increased reliability.

[18] *See CPUC Decision* at 3.

21. Ruby acknowledges that PG&E has decided to turn back 250 million cubic feet (MMcf) per day of its existing firm capacity on GTN, which, along with Texas Gas, has expressed concern that Ruby's proposed project could have potential adverse impacts on existing pipelines in the market and their captive customers. However, citing *Guardian Pipeline, LLC* (*Guardian*), Ruby stresses that GTN has an obligation to remarket its unsubscribed capacity.[19] Ruby believes that GTN can benefit from its proposed project because it will give GTN the opportunity to transport Rockies gas supplies for its shippers north from Malin. Ruby notes it is currently holding discussions with GTN concerning such firm transportation options.[20] Finally, Ruby argues that any adverse impacts on GTN would be attributable solely to competition, which the Commission has previously found benefits gas consumers.[21]

a. Protests, Comments, and Answers

22. As stated, Texas Gas and GTN raise concerns about the proposed pipeline's possible adverse impacts on existing pipelines in the same market and those pipelines' captive customers. In its protest, Texas Gas identifies itself as a firm captive shipper on Ruby's affiliated pipeline, El Paso Natural Gas Company (El Paso). Texas Gas asserts that El Paso's corporate family should hold Texas Gas and other captive shippers harmless from stranded costs or discount adjustments that result from Ruby's new capacity to California and Nevada.

23. Texas Gas notes that El Paso claims in its ongoing rate case in Docket No. RP08-426-000 that 71 percent of its discounted contracts are to California and seeks a discount adjustment of $112.7 million in that proceeding, of which over $99 million is attributable to the California zone.[22] Texas Gas further emphasizes that El Paso maintains in its rate

[19] 91 FERC ¶ 61,285 at, 61,977 (2000). Ruby also points to GTN's statement that it "recognizes its obligation to attempt to remarket unsubscribed capacity and will seek to do so vigorously through all available avenues." Gas Transmission Northwest Corp. (GTN), March 2, 2009 Comments at 8.

[20] Ruby observes that GTN contemplated directly connecting its pipeline to Rockies gas supplies via the proposed Sunstone project, which is currently in pre-filing at the Commission in Docket No. PF09-2-000.

[21] In *Guardian* we found that potential adverse impacts on an existing pipeline and its existing customers "will be the result of competition, which we believe will lead to future benefits to all market participants." 91 FERC ¶ 61,285 at 61,978.

[22] Texas Gas Service Co., March 2, 2009 Protest at 3.

proceeding that there is currently an excess of 3 billion cubic feet (Bcf) per day of interstate pipeline capacity into California,[23] and that El Paso has expressed concerns that additional capacity to California will either be stranded or sold at significant discount.[24] Texas Gas argues that Ruby's proposal to create additional capacity to California and Nevada could potentially exacerbate El Paso's problem. Texas Gas argues that while Ruby has directly addressed impacts on GTN and Northwest Pipeline Corporation (Northwest), Ruby has failed to discuss impacts on its own affiliate, El Paso.

24. Texas Gas asserts that Ruby, as an affiliate of El Paso, should not be permitted to construct additional capacity into California, as this additional capacity will burden captive shippers with discounted and stranded capacity on the El Paso system. Texas Gas insists that for Ruby to comply with the Certificate Policy Statement's directive that new pipelines make efforts to eliminate or minimize any adverse effects the project might have on existing pipelines in the market and their captive customers, the El Paso corporate family should hold Texas Gas and El Paso's other captive shippers harmless from any stranded costs or discount adjustments resulting from Ruby's new capacity into the California and Nevada markets.

25. In its comments, GTN states that it "supports the Commission's goal of promoting the development of a strong energy infrastructure" and does not oppose authorization of the Ruby pipeline. Nevertheless, GTN wants the Commission to consider the potential effects of the proposed Ruby pipeline on existing pipelines and their captive customers, as required by the Certificate Policy Statement. Citing the *2008 California Gas Report* prepared by the California Gas and Electric Utilities,[25] GTN states that currently there is more than 3.3 Bcf per day of excess interstate capacity into California, which is consistent with El Paso's claim in its pending rate case in Docket No. RP08-426-000. GTN argues that the construction of Ruby's proposed pipeline will increase this excess capacity to 4.8 Bcf per day.

26. GTN also cites testimony filed by El Paso in its rate case that "some or all of the pipelines transporting to California will likely have some capacity that is: (1) underutilized; (2) contracted for short terms; and/or (3) contracted at discounted

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[23] *Id.* at 4.

[24] *Id.*

[25] Utilities participating in the report include Southern California Gas Company, PG&E, San Diego Gas & Electric Company, Southwest Gas Corporation, the City of Long Beach Gas & Oil Department, and Southern California Edison Company.

rates."[26] GTN states that as of February 1, 2009, it has 584,520 Dth per day of unsold long-term firm capacity at Malin, by November 2010 it may have 736,262 Dth per day of unsubscribed capacity at Malin, and the addition of 1.5 Bcf per day of capacity associated with Ruby will only exacerbate the situation.

27. In its answer to GTN's comments, the CPUC states that GTN has previously testified in its own rate case in Docket No. RP06-407-000 that due to declining supplies of gas from the Western Canadian Sedimentary Basin, pipeline capacity out of that area exceeds gas supply production, and as excess pipeline capacity increases, producers' incentive to hold on to and pay for firm capacity decreases.[27] Thus, the CPUC argues that with the gas supply accessed by GTN declining and predicted to continue to decline in the future, it is not surprising that the GTN system is not fully subscribed, nor is it surprising that shippers, including PG&E, would seek other supply options. The CPUC also claims that GTN has selectively cited testimony from the El Paso proceeding in Docket No. RP08-426-000. To make its point, the CPUC notes that El Paso, despite testifying about how competitive the interstate market into California is, has stated that it nevertheless expects that when its currently discounted contracts with Southern California Gas Company expire in 2009, they will be renewed at El Paso's maximum tariff rates.[28]

28. The CPUC argues that pipeline capacity to the California border is not a reasonable proxy for the amount of gas that can reach California, as new facilities and growing upstream markets divert gas supplies from reaching California. As an example, the CPUC cites Transwestern Pipeline Company's (Transwestern) recently approved Phoenix Expansion Project, which will permit a decrease of 500 MMcf per day in the amount of gas that reaches California via Transwestern's system without decreasing the physical capacity of the Transwestern pipeline at the California border.[29]

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[26] GTN, March 2, 2009 Comments at 7 (citing El Paso Natural Gas Co., Prepared Direct Testimony of Catherine E. Palazzari, Docket No. RP08-426-000, at 17-18 (filed June 30 2008)).

[27] California Public Utilities Commission (CPUC), March 27, 2009 Answer at 2-3.

[28] *Id.* at 4.

[29] *Transwestern Pipeline Co.*, 121 FERC ¶ 61,175 (2007), *stay and reh'g denied*, 122 FERC ¶ 61,165 (2008) (*Transwestern*).

29. The CPUC observes that traditional gas supply sources can decline, such as those from the Western Canadian Sedimentary Basin, requiring shippers to acquire new supplies from different production areas through new transportation facilities. The CPUC asserts that GTN is ignoring potential benefits that the proposed Ruby pipeline would provide GTN, e.g., the interconnection between Ruby and GTN at Malin, which would provide GTN shippers direct access to Rocky Mountain gas supplies. Such access should help GTN in its efforts to remarket unsubscribed or turnback capacity.

30. Ruby contends that the issues identified by Texas Gas and GTN are speculative, GTN has not requested any specific relief, and the relief requested by Texas Gas is inconsistent with Commission policy. Ruby acknowledges that the construction of new pipelines can create challenges for existing pipelines. Ruby suggests that GTN was the beneficiary of such construction in the early 1990s when its requests to add capacity, to access what were at that time less expensive gas supplies from Canada, were approved by the Commission.[30] Ruby states that these expansions of the GTN system, along with other expansions, created unsubscribed capacity on other interstate pipeline systems connected to gas supplies in the southwestern United States.[31]

31. Ruby questions GTN's assertion that the construction of Ruby's proposed pipeline will lead to turnback and unsubscribed capacity on GTN's system. Ruby argues that the root causes of decreased utilization of the GTN system are the decline in Canadian gas exports and the increase in gas demand in Canada. Ruby asserts its new pipeline will provide GTN customers in the Pacific Northwest with direct access to Rocky Mountain gas supplies, which will increase utilization of the GTN system.[32]

32. Even if its new pipeline would result in an adverse impact on GTN, Ruby argues that its project should nevertheless be authorized since it is Commission policy to rely on market forces to determine which projects should be built. Ruby contends that in this case, its proposed pipeline has market support and will provide consumers with access to gas from production areas with lower costs than gas from currently accessible production areas. Ruby notes that while the Certificate Policy Statement recognizes that one factor in determining whether to certificate a new project is to determine if the proposal will

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[30] *See Pacific Gas Transmission Co.*, 54 FERC ¶ 61,035 (1991).

[31] *See, e.g., Transwestern Pipeline Co.*, 72 FERC ¶ 61,085, at 61,445 (1995); *El Paso Natural Gas Co.* (*El Paso*), 72 FERC ¶ 61,083 at 61,439 (1995).

[32] Ruby states that it has submitted a request for firm transportation service on the GTN system.

have any adverse effects on existing pipelines, the Commission emphasized that "it need not protect pipeline competitors from competition"[33] The Commission went on to say that "[r]ecognizing the impact of a new project on existing pipelines serving the market is not synonymous with protecting incumbent pipelines from the risk of loss of market share to a new entrant but rather is a recognition that the impact on the incumbent pipeline is an interest to be taken into account in deciding whether to certificate a new project."[34] In an order clarifying the Certificate Policy Statement, the Commission stated that "[g]enerally this means that construction of a pipeline whose rates are unsubsidized will not be considered to have an adverse effect on an existing pipeline."[35] Ruby stresses that no party disputes that Ruby's rates will be unsubsidized.

33. With respect to any future unsubscribed capacity on GTN, Ruby maintains GTN is required to remarket such capacity. With respect to excess pipeline capacity to California, Ruby and the CPUC observe that there is a disparity between the physical capacity at the California border and the capacity available as a practical matter at the border. Like the CPUC, Ruby emphasizes that there are substantial and growing markets upstream of the California border on all of the major pipelines serving the state, including markets in the Pacific Northwest served by GTN's system. In view of this, Ruby insists that "a substantial portion" of the physical capacity at the California border is unavailable because it is part of the path under contract to firm shippers that use their capacity to serve markets upstream of the California border.[36] Ruby speculates that the potential GTN markets in the Pacific Northwest could be served by Rocky Mountain gas supplies transported northward on the GTN system from the Malin interconnection with Ruby.

34. Ruby observes that Commission efforts to ensure fair competition do not oblige the Commission to protect incumbent pipelines from legitimate competitive forces. Ruby points out that GTN has made no claims that Ruby's proposal constitutes unfair competition. Ruby states that the CPUC has "conclud[ed] that the process used by PG&E [to acquire capacity on Ruby's proposed pipeline] was reasonable,"[37] and adds

[33] Certificate Policy Statement, 88 FERC at 61,748.

[34] *Id*.

[35] 90 FERC at 61,397 (*order on clarification* of Certificate Policy Statement).

[36] Ruby, March 26, 2009 Answer at 5.

[37] *CPUC Decision* at 59.

that California consumer advocacy groups have supported the proposal.[38] Ruby believes its proposal is consistent with the Commission's pro-competitive policies and the outcome in *Guardian.* In that case, the Commission stated that its "longstanding policy has been to allow pipelines to compete for markets and to uphold the results of that competition absent a showing of anticompetitive or unfair competition."[39] The Commission explained that it generally concludes "that the benefits of competition, which would be lost if we interfered with a customer's decision to switch suppliers when its contract expired, outweigh the potential adverse impact on the previous supplier."[40] Ultimately, the Commission found that an existing pipeline's claim that the new project would cause its customers to turn back capacity and thereby reduce its revenues was a speculative, worst-case scenario and rejected it as a basis for denying certificate authority for Guardian's proposed pipeline facilities.[41]

35. Ruby opposes Texas Gas's proposal that the Commission require the El Paso corporate family to hold Texas Gas and other shippers harmless from any stranded costs or discount adjustments resulting from the new capacity into California and Nevada that Ruby's proposed project would provide. Ruby characterizes the prospect of turnback capacity and revenue reduction as speculative, and the possible impact on El Paso facilities serving southern California markets as even more speculative. Ruby maintains that Texas Gas did not provide any legal basis for its "hold harmless" request and did not provide any facts to support its claims. Ruby contends that the Texas Gas request conflicts with the Commission's determination that a proposal to construct a pipeline whose rates will be unsubsidized will not fail to satisfy the Certificate Policy Statement on the grounds that it will result in competition that could have potential adverse effects on existing pipelines.[42]

36. Ruby also argues that Texas Gas's focus on Ruby's affiliation with El Paso is irrelevant and misplaced because if Ruby does not build a new pipeline from the Rockies to California, another pipeline will be constructed in response to the pressures of growing Rockies production and the decline of western Canadian gas supplies. Ruby notes that if

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[38] Ruby, March 26, 2009 Answer at 7.

[39] 91 FERC at 61,977.

[40] *Id*.

[41] *Id.*

[42] 90 FERC at 61,397 (*order on clarification* of Certificate Policy Statement).

the GTN-sponsored Sunstone project and Spectra Energy's planned Bronco project come to fruition, they will lie along approximately the same route as Ruby from Opal to Malin and be in competition to provide transportation service. Ruby also notes that there are several proposals to construct liquefied natural gas (LNG) projects in the Pacific Northwest, and that those projects would result in domestic gas production competing with imported supplies. Ruby insists that adopting "Texas Gas's theory would have the pernicious, anti-competitive effect of penalizing a company (or its parent) for being a successful competitor or discouraging and possibly forcing from the field some categories of competitors, to the detriment of consumers."[43]

b. <u>Commission Response</u>

37. We find that Ruby's proposal is consistent with Commission policy, as any adverse impacts of the proposal on competing pipelines and their existing customers will be the result of fair competition. Further, since the Ruby pipeline will bring domestic gas supplies to markets that now depend on declining imports of Canadian gas supplies, any adverse impacts of the Ruby pipeline on existing pipelines currently transporting those supplies and their shippers may be mitigated by the new opportunities that the Ruby pipeline will create for the existing pipelines to transport gas from additional sources for their shippers. Ruby's proposal presents facts similar to *Guardian*, in which a local distribution company (LDC) sought to replace expiring transportation contracts on an existing pipeline with new transportation contracts on the proposed Guardian pipeline system. In that case, the state public service commission had approved the LDC's acquisition of capacity on Guardian's proposed pipeline that would compete with the existing pipeline. Similarly, in this case, the CPUC directed PG&E to replace expiring contracts on GTN in order to diversify PG&E's gas supply, and after evaluating several options, the CPUC approved PG&E's acquisition of capacity on Ruby's proposed pipeline. No party alleges that Ruby has acted improperly in soliciting prospective customers.

38. GTN's concern that Ruby's pipeline will lead to unsubscribed capacity on GTN's system and adversely impact its captive customers is premature and speculative. The potential loss of transportation services by GTN are attributable, in part, to the decline in gas supplies from production areas in western Canada. We also note that Ruby and GTN are holding discussions on transportation options using GTN facilities from Ruby's proposed interconnection with GTN at Malin. This interconnection will offer GTN's captive customers the opportunity to access competitively-priced domestic gas from

[43] *Id.* at 10.

Rocky Mountain production areas and will offer GTN an opportunity to increase its system's utilization.

39. Texas Gas' concerns about the potential turnback of capacity on the El Paso system are also premature and speculative. Our Certificate Policy Statement calls for us to consider the impact of a new project on existing pipelines, and we have done so here. While Ruby's proposed project will provide a competitive alternative to existing pipelines, none of these parties has demonstrated real economic harm, especially since Ruby's footprint will overlap with only a portion of existing pipelines' service areas. We find any potential adverse impacts on existing pipelines are outweighed by the benefits to gas consumers from the increased reliability and flexibility that will result from being able to access additional supplies of competitively-priced domestic gas. We reject Texas Gas's request, based on its concern as a holder of capacity on El Paso's system, that we somehow condition our approval of Ruby's proposed pipeline to ensure that El Paso's shippers do not incur increased costs as the result of El Paso having more unsubscribed capacity once its affiliate Ruby constructs its competing pipeline. There is no evidence that, to the extent El Paso may lose throughput as a result of Ruby's operation, this loss will be the result of unfair competition or improper activities on the part of either Ruby or its affiliate, El Paso.

3. <u>Landowners and Communities</u>

40. Ruby describes its efforts to eliminate or minimize adverse impacts on landowners and communities affected by the route of its proposed pipeline. These efforts have included discussing the location and timing of construction with landowners during the pre-filing process and revising the planned pipeline route to avoid agricultural drain tiles in Corrine and Brigham City, Utah. Ruby states it has received voluntary survey access to 99 percent of the proposed right-of-way. In view of Ruby's efforts, including the fact that approximately 58 percent of the planned pipeline route will be sited on federal and state lands, we find – in accord with our Certificate Policy Statement – that the potential project benefits will outweigh the adverse economic impacts on landowners and communities. In reaching this finding, we stress that our environmental review has not been completed and, therefore, we do not preclude the need for modifications to the project or the pipeline route.

4. <u>Conclusion</u>

41. For the reasons discussed above, we find that any adverse effect Ruby's proposed project may have on existing pipelines or their customers will be outweighed by the public benefits the project will provide. Ruby has precedent agreements for long-term

service utilizing a large percentage of the capacity of the proposed pipeline.[44] In addition, the Ruby project will provide direct access for producers in the Rockies to the California, Nevada, and Pacific Northwest markets. We believe Ruby's project will improve the reliability and flexibility of service available to gas customers in California and the Pacific Northwest by providing those customers with access to an abundant supply of competitively priced domestic gas from Rocky Mountain production areas. Further, we find that Ruby has made adequate efforts to minimize impacts on landowners and communities.

42. Therefore, based on our assessment of Ruby's proposal, and consistent with the Certificate Policy Statement and NGA section 7, we preliminarily find – pending completion of our environmental review – that the proposed project is required by the public convenience and necessity.

B. Rates

1. Initial Rates

a. Recourse Rates

43. Ruby's estimated first-year cost of service of $574,905,154 is based on a return on equity (ROE) of 14.0 percent, a 9.3 percent cost of debt, and a straight-line depreciation rate of 2.86 percent, reflecting a 35-year useful life.[45] Ruby anticipates a capital structure of 40 percent equity and 60 percent debt. The proposed capital structure, ROE, and debt result in an overall pre-tax return of 14.40 percent. Ruby states that it has subtracted from the cost of service projected revenues of $28,745,258 from interruptible and short-term firm services to get a net cost of service of $546,159,897, which Ruby uses to

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[44] As discussed above, Ruby states that it has precedent agreements for a total of 1,097,857 Dth per day of firm transportation service. Consistent with Commission practice, Ruby's certificate will include a condition that construction activities may not begin until it has executed final contracts for firm service volumes equivalent to those represented in its precedent agreements. *See, e.g., Tennessee Gas Pipeline Co.,* 125 FERC ¶ 61,100 at n.5 (2008); *Dominion Transmission, Inc.*, 124 FERC ¶ 61,146, at n.11 (2008). *See also Petal Gas Storage, L.L.C.*, 120 FERC ¶ 61,226, at P 9-13 (2007) (clarifying policy regarding execution of final contracts prior to commencement of construction).

[45] Exhibit N of Ruby's application shows that while Ruby's first-year cost of service is $574,905,154, by year ten the cost of service declines to $428,807,381.

compute its firm recourse rates. Ruby predicts the total sustainable average annual capacity of its pipeline to be 1,531,350 Dth/d and uses 95 percent of this annual average capacity (1,454,783 Dth/d) to design its firm rates. The resulting monthly maximum reservation charge is $30.9980 per Dth. For the commodity rate calculation, Ruby uses commodity units which are the demand units annualized at a 90 percent load factor resulting in a commodity rate of $0.0150 per Dth. The recourse rates for the interruptible services (IT, PAL and SS-1) are derivative of the FT rate and are $1.0296 per Dth. Ruby states that it bears the risk of collecting the $28,745,258 of total cost of service allocated to these interruptible and short-term firm services.

44. The Commission's policy is that the recourse rate should be a cost-based, fully allocated rate based on the capacity of the system.[46] Ruby's proposal is not consistent with our policy of setting reservation rates based on 100 percent of the capacity of the system and setting commodity rates at the 100 percent load factor equivalent of the reservation rates. We will therefore require Ruby to revise its recourse rates accordingly.

b. <u>Negotiated Rate Authority</u>

45. Ruby requests authorization to charge negotiated rates. Section 33 of its *pro forma* tariff sets out the procedures and policies that Ruby will apply if it agrees to negotiate rates with a shipper. Ruby states that it offered all shippers the opportunity to choose a recourse rate or a negotiated rate. Ruby states that all of its committed customers opted for specific negotiated rates instead of recourse rates. The negotiated rates are lower than the proposed initial recourse rates and will be fixed for the terms of the contracts. Ruby's proposed tariff provides that the Annual Charge Adjustment (ACA) surcharge,[47] the applicable fuel use charge and lost and unaccounted for gas reimbursement in-kind, and the Electric Power Cost (EPC) Adjustment charge to recover costs of electric power to run compressors apply to all negotiated-rate shippers.

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[46] *See Trans-Union Interstate Pipeline, L.P.*, 104 FERC ¶ 61,315, at P 26 (2003).

[47] Section 382.202 of the Commission's regulations provides for the adjusted costs of administration of the Commission's natural gas regulatory program to be assessed against each natural gas pipeline company proportionally based on the amount of gas it transports each year. 18 C.F.R. § 382.202 (2009). Section 154.402 of the Commission's regulations provides for a pipeline to adjust its rates annually to recover from its customers the ACAs assessed under Part 382 of the regulations. 18 C.F.R. § 154.402 (2009).

46. Ruby states that it offered all prospective customers the option of subscribing for capacity for longer terms and greater quantities at a reduced negotiated rate. One customer, PG&E, qualifies as an anchor shipper with a reduced rate because it committed to firm service for a greater quantity (375,000 Dth/day) and a longer term (15 years) than the other negotiated-rate shippers. Ruby explains that after the execution of the PG&E precedent agreement, but before the execution of its other precedent agreements, Ruby experienced a significant increase in the cost of raw materials and contractors, causing Ruby to increase its estimated rates to reflect these higher projected costs. As a result, Ruby states that PG&E will pay a negotiated rate of $0.68 per Dth, compared with other shippers' negotiated rates of $0.88 to $0.95 per Dth.[48]

47. Ruby states that to provide rate certainty, it has negotiated a provision with shippers that will recalculate the negotiated rate in the event that a future expansion raises the gas fuel and electric charge above a threshold level. Under this provision the negotiated rate will be lowered by the dollar equivalent of the difference in the amount of the initially-approved total fuel charge or 1.1 percent, plus the fuel charge resulting from the expansion. Ruby believes this provision will ensure that existing shippers will not be asked to subsidize the rates, including fuel rates, of future shippers served by a subsequent expansion, and is therefore consistent with the Commission's Certificate Policy Statement.

48. We will approve Ruby's request for negotiated-rate authority. The service agreements containing a negotiated rate must comply with our policy statement on negotiated rates[49] and the decision in *NorAm Gas Transmission Co.*[50] Consistent with *NorAm*, Ruby must file either its negotiated rate agreements or numbered tariff sheets at least 30, but not more than 60, days prior to the commencement of service. If the negotiated rate agreements are non-conforming service agreements, Ruby must file the

[48] Ruby states that, for ease of comparison, both rates are stated in daily equivalent 100 percent load factor rates but will be invoiced as two-part straight-fixed variable type rates.

[49] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *pet. for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998).

[50] *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996) (*NorAm*).

non-conforming agreements and clearly delineate the differences between the non-conforming rate agreements and its *pro forma* service agreement in redline and strikeout. If Ruby files numbered tariff sheets, for each shipper paying a negotiated rate it must state the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, any formula upon which the negotiated rate is designed, the beginning and end dates of the contract term, and a statement that the agreements conform in all material respects with the *pro forma* service agreement in Ruby's tariff.

49. We will also approve Ruby's rate and contractual offerings based on a shipper's status as an anchor shipper. Under the Commission's negotiated-rate policies, a project sponsor is permitted to negotiate individual rates for particular customers as long as it does so in a manner that is not unduly discriminatory. We have clarified that our existing negotiated-rate and discounting policies permit, under certain circumstances, a project sponsor to provide rate incentives to prospective shippers on a number of grounds – e.g., volumes to be transported and contract length – without being deemed to have engaged in undue discrimination.[51] We review different rate incentives on a case-by-case basis. We have observed that the risk of undue discrimination can be reduced to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers.[52]

50. Here, Ruby has explained that it offered rates and contractual incentives to secure adequate support for the project. Qualification for these incentives was based on a prospective shipper's commitment to the project, as set forth in each shipper's publicly verifiable executed precedent agreement. In addition, all potential shippers had an opportunity to become anchor shippers. In view of these circumstances, we find that the negotiated rates and contractual terms offered to anchor shippers are not unduly discriminatory and are reasonable for a new pipeline, subject to the modifications and conditions discussed below.

2. Return on Equity and Capital Structure

51. Ruby proposes a capital structure of 40 percent equity and 60 percent debt and a 14 percent ROE. Ruby declares it has reviewed the returns the Commission has granted in other major construction projects and new pipeline development, with emphasis on the

[51] *Revisions to Blanket Certificate Regulations and Clarification Regarding Rates*, Notice of Proposed Rulemakings, FERC Stats. & Regs. ¶ 32,606, at P 93-107 (2006).

[52] *Id*. at P 102.

indicated basis differential between the cost of long-term debt and the costs of equity.[53] Ruby contends that the proposed 14 percent return is a conservative request for its project, given what it describes as a currently uncertain and difficult capital market environment.

52. The CPUC argues that Ruby's requested ROE exceeds returns granted by the Commission to other natural gas companies, and would overly compensate Ruby, which in turn could impact rates for other California natural gas consumers.

53. We find Ruby's proposed return on equity and capital structure are reasonable for a new pipeline company and are consistent with our orders in other proceedings.[54] In *MarkWest*,[55] we approved a 14 percent ROE, but required that the project sponsor design its cost-based rates on a capital structure with at least 50 percent debt. Ruby's proposed 14 percent ROE and proposed capital structure of 40 percent equity and 60 percent debt is in line with our recent orders.

3. <u>Revenue Sharing</u>

54. Ruby proposes a cost-of-service credit of $28,745,248 to reflect a reasonable level of future revenues from interruptible service under Rate Schedules IT, PAL and SS-1, and from short-term firm service under Rate Schedule FT-1. Therefore, Ruby has allocated five percent of its total cost of service to these three proposed interruptible services. Ruby has agreed to share short-term and interruptible revenues with its recourse rate shippers and most negotiated rate shippers once Ruby has secured contracts with long-term firm shippers equal to the initial design capacity. Specifically, Ruby proposes to allocate a proportionate share to each shipper once Ruby has recovered its total cost of service for all services and the revenues for Rate Schedules IT, PAL, and SS-1 and short-term firm revenues under Rate Schedule FT-1 exceed the cost allocation underlying the rate design of those services. Under the proposal, those negotiated shippers with contracts which provide for such sharing would receive the percentage of their allocated

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[53] Ruby cites *Mid-Atlantic Express, LLC*, 126 FERC ¶ 61,019, at P 31 (2009) (*Mid-Atlantic Express*) and *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 27 (2008) (*MarkWest*).

[54] *See, e.g.*, *Mid-Atlantic Express*, 126 FERC ¶ 61,019 at P 31; *MarkWest*, 125 FERC ¶ 61,165 at P 27; *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, at 61,653 (2005).

[55] *MarkWest*, 125 FERC ¶ 61,165 at P 27.

share stated in their negotiated rate transportation service agreement (TSA), and recourse shippers would receive 50 percent of their allocated share.

55. The Commission's general policy regarding new interruptible services requires the project sponsor to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers, or to allocate costs and volumes to these services.[56] Here, Ruby proposes a different approach wherein it proposes a five percent cost-of-service credit to reflect future revenues under its interruptible services, coupled with a proposal to credit 50 percent of the interruptible and short-term firm revenues, once the pipeline is fully subscribed and revenues exceed the cost of service. This proposal is inconsistent with our policy to either fully allocate costs to interruptible services or to credit 100 percent of revenues from interruptible services. Ruby is directed to revise and refile this provision to conform to our policy.

4. Rate Changes and Three-Year Filing Requirement

56. If Ruby desires to make any other rate changes not specifically authorized by this preliminary determination prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c), and in that filing Ruby must provide cost data and the required exhibits supporting any revised rates.[57] After the facilities are placed in service, Ruby must make an NGA section 4 filing to change its rates to reflect any revised construction and operating costs.

57. Consistent with Commission precedent, we require Ruby to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.[58] In its filing, the projected units of service should be no lower than those upon which Ruby's approved initial rates are based. This filing must include a cost and revenue study in the form specified in section 154.313 of our

[56] *See, e.g., Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005) (*Entrega*); *Maritimes & Northeast Pipeline, L.L.C.*, 81 FERC ¶ 61,166, at 61,725 (1997).

[57] The Commission cautions that if Ruby intends to revise its initial rates prior to the in-service date of its project, it must submit its amendment application sufficiently in advance of the in-service date to provide the Commission time to review and act on that filing prior to Ruby's filing tariff sheets to implement those rates.

[58] *See, e.g., MarkWest,* 125 FERC ¶ 61,165 at P 34; *Empire State Pipeline,* 116 FERC ¶ 61,074, at P 133 (2006); *Entrega,* 112 FERC ¶ 61,177 at P 52.

regulations to update cost-of-service data.[59] After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing Ruby may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

5. *Pro Forma* Tariff Issues

58. Ruby explains that its *pro forma* tariff has been primarily modeled after the currently effective tariff of Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains), but that certain provisions differ from similar provisions in the Cheyenne Plains tariff due to the unique requirements of the Ruby project. Ruby maintains it has worked with its shippers to construct a tariff that incorporates comments and suggestions from individual shippers. Ruby states that all of the changes between its *pro forma* tariff and Cheyenne Plains' tariff were reviewed and discussed with its prospective shippers prior to submitting its application to the Commission. Ruby asserts that these changes are supported by Commission policy and/or practices.

a. Operational Purchases and Sales

59. Ruby requests authority to purchase and sell operational gas, pursuant to section 13.7 of its General Terms & Conditions (GT&C), to the extent necessary to maintain system pressure, fuel quantities, and line pack. Ruby avers it will include information regarding purchases and sales in its Electric Power Cost (EPC) filings.

60. We will grant Ruby authority consistent with our order in *Colorado Interstate Gas Co. (CIG)*.[60] Ruby's proposal to include operational purchase and sales information in EPC filings is discussed below.

b. Fuel, Lost and Unaccounted For (FL&U)

61. Ruby proposes to be reimbursed for fuel (gas compressor costs and miscellaneous system operations gas, such as building heat and vehicle refueling) and lost and unaccounted for gas in-kind, pursuant to section 26 of its GT&C. Fuel charges would be assessed for all services except those that do not consume fuel, i.e., transportation service provided via backhaul and transportation service provided in the no-fuel zone upstream

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[59] 18 C.F.R. § 154.313 (2009).

[60] 107 FERC ¶ 61,312 (2004), *order on reh'g*, 111 FERC ¶ 61,216 (2005).

of Ruby's proposed Roberson Creek compressor station. All services would be assessed a charge for FL&U. Ruby proposes an initial fuel retention percentage of 0.552 percent and an L&U of 0.15 percent. Ruby proposes to submit quarterly fuel filings to adjust for actual experience and provide a basis for a volumetric true-up mechanism.

62. Commission policy prohibits a pipeline from shifting costs associated with its negotiated-rate shippers to its recourse-rate shippers. We have held that when a pipeline negotiates fuel retainage percentage factors with a negotiated-rate shipper, the pipeline must bear the risk of underrecovery of its fuel costs, and cannot shift unrecovered fuel costs to its recourse-rate shippers.[61] We accept Ruby's proposed fuel provision with the caveat that Ruby will have the burden of showing that future fuel filings do not shift to its recourse-rate shippers any unrecovered fuel costs due to fuel caps that may be in its negotiated-rate agreements.

c. Electric Power Cost Charge

63. Ruby proposes a monthly charge to recover the electric power costs related to the operation of three electric drive compressors at Ruby's head station. These costs will include the charges of the electric provider, such as a connection fee and demand and usage charges. The EPC will be paid by shippers on a pro-rata basis based on the quantity of gas received by Ruby from the shippers, and will be adjusted each quarter. As discussed below, the EPC will also include any system costs arising from mitigation of greenhouse gas emissions and a cost and revenue true-up related to fuel imbalances and gas balancing items. The projected EPC charge is equal to approximately $23 million per year. Ruby's proposal to collect its EPC through a separate charge is similar to other pipelines.[62] Accordingly, we will accept Ruby's EPC charge subject to certain conditions related to greenhouse gas costs, and the cost and revenue true-up.

i. Greenhouse Gas Costs

64. The proposed EPC charge includes system costs arising from mitigation of greenhouse gas emissions, i.e., operating costs Ruby incurs in order to become carbon-neutral, such as purchasing offsets and allowances to compensate for carbon produced at

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[61] *See, e.g.*, *Algonquin Gas Transmission, LLC*, 124 FERC ¶ 61,195 (2008).

[62] *See ANR Pipeline Co.*, 122 FERC ¶ 61,061 (2008); *Florida Gas Transmission Co.*, 98 FERC ¶ 61,347 (2002); *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001).

its gas compressors and its other system operations. Thus, Ruby's customers will pay, through the EPC charge, any mandatory costs arising from greenhouse gas emissions taxes imposed on Ruby, including any command and control costs, cap and trade costs, other costs arising from statutory or regulatory requirements, and any costs incurred on a voluntary basis with respect to the acquisition or production of renewable energy credits, e-tags, greenhouse gas allowances, or greenhouse gas offsets. All such costs will be included in the EPC charge, along with the costs to operate Ruby's electric compressors. During periods in which mitigation costs associated with greenhouse gas emissions are completely voluntary, Ruby has agreed to limit the one-year recovery of such costs to $12.5 million per year. Ruby's customers will have the right to review such costs in Ruby's periodic EPC charge filings, and can question whether the costs were prudently incurred and whether the amounts were properly calculated.

65. We rejected a similar proposal to recover costs for the purchase of emissions allowances and the payment of emission taxes or other forms of compensation in *Southern Natural Gas Co. (Southern)*.[63] In that case, we found there was no legislation that imposed greenhouse gas costs on Southern. Accordingly, we rejected Southern's proposal without prejudice to it subsequently submitting a similar proposal if it actually incurred such costs. Here, Ruby proposes to recover voluntary costs, capped at $12.5 million per year. Ruby has not provided details about these voluntary offsets, including whether they are currently available or the source from which they may be acquired. Therefore, we reject Ruby's proposal, without prejudice to Ruby's submitting additional tariff language and information that identifies existing voluntary offsets, credits, or allowances. While no party protests Ruby's proposal to recover future mandatory costs, we reject it consistent with *Southern*, because there is not yet any legislation that would impose such costs on Ruby. Further, we find the provision to be vague and overly broad with respect to what specific costs could be recovered. Our rejection is without prejudice to Ruby filing a more fully developed and detailed proposal in the event it actually incurs mandatory costs.

ii. <u>Cost and Revenue True-up</u>

66. The proposed EPC includes the cost and revenue true-up related to fuel imbalances and gas balancing items. Ruby states that its fuel tracker tariff provisions are similar to those of Cheyenne Plains, with Ruby including the cost and revenue true-up component of Cheyenne Plains' fuel in-kind tracker in its EPC so that a dollar cost/revenue need not be converted to a Dth in-kind equivalent. Ruby plans to track the changes in the value of over- or under-collections of gas fuel quantities used and retained

[63] 127 FERC ¶ 61,003, at P 28-29 (2009).

and related gas balance items, and will flow these changes in value through to its customers. However, Ruby intends to defer as a regulatory asset, in FERC Account 182.3, accrued revaluation gains and/or losses associated with such fuel and related gas balancing items, until such gains and/or losses are realized by a cash transaction in a future period.

67. BP protests Ruby's cost and revenue true-up proposal, arguing that Commission precedent prohibits Ruby from including shipper-related imbalance costs in the EPC.[64] BP insists that Commission precedent only allows a gas company to collect shipper-related imbalance costs and revenues through its imbalance cash-out provisions, and not through a fuel tracker, which is designed for fuel-related imbalance costs and revenues. BP contends Ruby's true-up mechanism would impermissibly permit Ruby to include individual shipper imbalance costs and fuel-related imbalance costs in the EPC. BP further contends that Ruby should clarify its tariff to ensure that only actually incurred costs related to fuel imbalances are recoverable in the fuel surcharge adjustment.

68. We share BP's concerns, and will reject Ruby's cost and revenue true-up proposal. Consistent with *CIG*,[65] we find that Ruby's proposal to track the changes in the value of over- or under-collections of gas fuel quantities and related gas balance items, and to flow these changes in value through to the customers, is not just and reasonable. In *CIG*, we concluded that the company's monthly revaluation of its system balance activity represents a form of impermissible "deemed" cost recovery by reflecting costs the company has not actually incurred. Therefore, such costs are not appropriately included in the FL&U tracking mechanism. We reasoned that these booked costs do not necessarily reflect a change in the company's cash flow and therefore should not be included as tracked costs. We found that CIG's cost and revenue true-up would incorporate shipper imbalance costs and revenues into the FL&U tracking mechanism, even though these costs and revenues are more appropriately borne by the shippers causing such imbalances. We determined that commingling all gas balance items together does not further transparency or a fair allocation of costs. Ruby is directed to refile its proposal consistent with *CIG*.

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[64] BP cites *Wyoming Interstate Co., Ltd.*, 125 FERC ¶ 61,240, at P 30 (2008) (*Wyoming Interstate*); *CIG*, 124 FERC ¶ 61,311 at P 38 (2008); *Wyoming Interstate*, 122 FERC ¶ 61,303 at P 37 and n.23 (2008).

[65] 128 FERC ¶ 61,117 (2009).

d. Imbalance Resolution Timing Costs in Cashout

69. Ruby's proposed GT&C section 22.3 sets forth the cash out provisions as part of imbalance management. GT&C section 22.3(b)(iii) provides that a shipper's imbalances will be cashed out at the reference price,[66] plus any system Imbalance Resolution Timing Costs, which will be allocated to cash out quantities on a pro-rata basis. Ruby defines Imbalance Resolution Timing Costs as the actual cash gas costs reflecting the difference in gas prices between the time a cash out occurs and the time the physical imbalance is resolved by Ruby.

70. We will reject Ruby's Imbalance Resolution Timing Cost provision. Consistent with Commission precedent,[67] we find that Ruby's proposal could allow it to make or lose money on the differential between the cost of gas valued at the cash-out price and the ultimate cost of the actual purchases. Such gains and losses would be inappropriate in a cash-out mechanism. As we stated in *CIG*, provisions to recover timing costs are not just and reasonable.[68]

e. Scheduling and Curtailment Priority

71. Ruby's proposed GT&C section 4.2 provides a higher scheduling priority to authorized overrun service under Rate Schedule FT-1 than to interruptible service under Rate Schedule IT, and a higher scheduling priority to interruptible service under Rate Schedule IT than to service under Rate Schedule PAL (an interruptible park and loan service). GT&C section 4.3 of Ruby's *pro forma* tariff provides that interruptible service under Rate Schedule PAL will be curtailed before interruptible service under Rate Schedule IT, and that interruptible service under Rate Schedule IT will be curtailed before overrun service under Rate Schedule FT-1.

72. The Commission considers authorized overrun to be an interruptible service and we thus require pipelines to accord the same scheduling and curtailment priorities to

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[66] The reference price is the weekly average of the daily mid-point pricing of Malin Hub prices reported in Gas Daily for NAESB Business Days. *See* Ruby, proposed FERC Gas Tariff, GT&C section 22.3(b)(iv)(4).

[67] *See CIG*, 126 FERC ¶ 61,085 (2009). *See also ANR Pipeline Co*., 80 FERC ¶ 61,173, at 61,726 (1997).

[68] *CIG,* 126 FERC ¶ 61,085.

interruptible and overrun services.[69] Although authorized overrun service is nominated under a firm service contract, the service is provided for nominations in excess of the firm shipper's contract demand and is only provided if capacity is available. Further, firm shippers do not pay a reservation charge for authorized overrun, but pay an authorized overrun rate equal to the rate paid by Ruby's interruptible transportation customers. Therefore, Ruby must revise GT&C sections 4.2 and 4.3 to provide the same priority to authorized overrun service and interruptible services.

f. Operational Balancing Agreements

73. Ruby's proposed GT&C section 22.4 states that Ruby may enter into an Operational Balancing Agreement (OBA) at receipt and delivery points with an interconnecting party on a not unduly discriminatory basis. In Order No. 587-G,[70] we adopted section 284.10(c)(2)(i) of our regulations,[71] which requires each interstate pipeline to enter into operational balancing agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline. While Ruby currently anticipates that all points, including major processing plant receipt points, will be operated under OBAs,[72] Ruby will be required to comply fully with this regulation once in service.[73]

g. North American Energy Standards Board (NAESB)

74. Ruby states that its proposed tariff complies with Version 1.7 of the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant's standards. However, since filing its application, we issued Order No. 587-T, which incorporates by reference Version 1.8.[74] Consequently, Ruby must submit revised tariff sheets to comply

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[69] *See, e.g., MarkWest*, 125 FERC ¶ 61,165 at P 44.

[70] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, *order on reh'g*, Order No. 587-I, FERC Stats. & Regs. ¶ 31,067 (1998).

[71] 18 C.F.R. § 284.10(c)(2)(i) (2009).

[72] Ruby, May 19, 2009 Data Response at 18, no. 11.

[73] *See Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 107 (2008).

[74] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-T, 74 Fed. Reg. 9162 (March 3, 2009), FERC Stats. & Regs. ¶ 31,289 (2009).

with Version 1.8. To assist in our review, Ruby should provide a table stating each standard and the location of that standard in its tariff, whether incorporated by reference or verbatim.

C. Precedent Agreements

1. Non-conforming agreements

75. Ruby's precedent agreements include four potential non-conforming provisions for which Ruby requests Commission approval: (1) renewal rights, (2) creditworthiness, (3) most favored nations, and (4) maximum daily quantity reductions. On March 30, 2009, Ruby filed sample unexecuted TSAs that include a redline version of these non-conforming provisions.[75] Ruby states that these provisions reflect the unique circumstances involved in securing commitments necessary to support the development and construction of its proposed project. Ruby maintains the provisions represent modest deviations from the *pro forma* service agreement and do not constitute impermissible material deviations. Ruby believes these provisions provide its prospective shippers with incentives necessary to make binding commitments and stresses similar contract provisions were offered to all potential customers in the open season. Ruby intends to request a review of additional potential non-conforming provisions when it submits all applicable TSAs prior to placing its pipeline in service.

76. We have accepted TSAs with terms that differ materially from a pipeline's tariff when we are assured that doing so will not adversely affect the quality of service received by any shippers.[76] We will accept Ruby's non-conforming provisions for the reasons stated below. These provisions reflect the unique circumstances involved with the construction of new energy infrastructure and provide needed financial security for all parties to ensure that Ruby's proposed project will be constructed and placed in operation.[77]

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[75] Ruby states that it filed the sample TSA consistent with the Commission's directives in *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259, at P 33 (2007).

[76] *See Gulfstream Natural Gas Sys. L.L.C.*, 100 FERC ¶ 61,036 (2002).

[77] *See CenterPoint Energy Gas Transmission Co.*, 102 FERC ¶ 61,222, at P 9 (2003), *citing CIG*, 101 FERC ¶ 61,268 (2002).

a. **Renewal Provisions**

77. Ruby states that its shippers have negotiated varying renewal rights. Section 20.3 of Ruby's *pro forma* tariff allows Ruby and a shipper to mutually agree to an evergreen, renewal, or rollover that would extend the primary term of the TSA. The majority of Ruby's prospective shippers have a standard contract term rollover provision providing a one-time unilateral right to extend the term of the TSA for five years. Anchor shippers have one-year term extension rights. Ruby states that the unilateral term extension provides shippers with the ability to renew their contracts at the existing negotiated rate at the end of the initial contract term, and that this contract option was offered to all its potential shippers. Ruby notes that the Commission has permitted parties to agree to evergreen or rollover provisions in contracts and permitted pipelines to grant contractual first refusal rights on a non-discriminatory basis to shippers who do not qualify for a regulatory right of first refusal (ROFR).[78] In view of this, Ruby asks the Commission to accept this non-conforming provision and find that it is not an impermissible material deviation from the *pro forma* TSA.

78. The Commission generally excludes negotiated rates from maximum tariff rate consideration, but we have allowed other pipelines to provide a contractual ROFR to shippers that would not otherwise be eligible for a regulatory ROFR. Here, Ruby provides a ROFR to anchor shippers. This ROFR will not apply to future negotiated rate shippers since they will not be similarly situated to the initial shippers. We find Ruby's renewal rights provisions to be acceptable, as they are consistent with similar Commission-approved proposals that allowed pipelines to negotiate ROFRs with shippers who would otherwise not qualify.[79]

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[78] Ruby cites *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified,* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied,* Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005); *TransColorado Gas Transmission Co.*, 109 FERC ¶ 61,117 (2004); *Columbia Gas Transmission Corp*., 101 FERC ¶ 61,337 (2002).

[79] *See CIG,* 105 FERC ¶ 61,095, at P 55 (2003).

b. Creditworthiness

79. Ruby states that it has proposed objective and transparent creditworthiness provisions for all shippers in section 25 of its GT&C, consistent with the requirements of the Commission's Creditworthiness Policy Statement.[80] Ruby states that these provisions will provide a clear and consistent measure for applying credit reviews for those shippers requesting service after Ruby places its new pipeline in service. Ruby adds that its negotiated rate shippers have agreed to additional creditworthiness contract provisions in order to support the new greenfield pipeline and have agreed to maintain sufficient evidence of creditworthiness throughout the terms of the precedent agreements and TSAs. At Ruby's request, all shippers may be required to demonstrate that: (1) the shipper's senior unsecured debt securities are rated at least BBB- by Standard and Poor's Corporation (S&P) and/or Baa3 by Moody's Investor Service (Moody's), or the shipper's long-term issuer rating is at least A- by S&P or A3 by Moody's (in the event the shipper is rated by both agencies, the lowest rating will be used); (2) the shipper is not under review for possible downgrade by S&P and/or Moody's; and (3) a sum of 12 months of anticipated reservation charges is less than 10 percent of the shipper's tangible net worth.

80. Ruby points out that the Commission has previously recognized that for new construction projects, pipelines need sufficient financial assurances from expansion shippers to protect the financial commitment of the project, and that the collateral and credit requirements for expansion shippers may need to be higher than the requirements for subsequent shippers. Ruby has negotiated higher credit thresholds for its expansion shippers. Thus, Ruby proposes that in the event a shipper is not rated by S&P or Moody's, the shipper must demonstrate that 60 months of anticipated reservation charges is less than 10 percent of the shipper's net worth, or that the shipper has a debt/EBIT ratio of less than three and that the sum of 48 months of anticipated charges is less than 10 percent of the shipper's tangible new worth, and that the shipper's credit and financial history and outlook are acceptable to Ruby. As an alternative, Ruby states that its shippers may satisfy their creditworthiness requirements by providing and maintaining, at their option: (1) an irrevocable, unconditional guarantee acceptable to Ruby issued by another person or entity which satisfies the creditworthiness standards described above; or (2) a cash deposit or an irrevocable letter of credit acceptable to Ruby equal to three years of the anticipated charges; or (3) such other credit arrangements which are mutually

[80] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191, at P 19 (2005) (*Creditworthiness Policy Statement*).

agreed to by Ruby and the shipper and which are accepted by Ruby on a nondiscriminatory basis.

81. The Commission recognizes the need for greater collateral for initial shippers on new pipeline systems or on facilities created by major expansion projects on existing systems. As we explained in our Creditworthiness Policy Statement, the collateral requirements that may be necessary for the initial shippers that will use new facilities are not necessarily just and reasonable when applied to future shippers on those facilities.[81] Therefore, we will accept Ruby's creditworthiness requirements for its initial shippers.

c. <u>Most Favored Nations</u>

82. Ruby states that the negotiated rate shipper precedent agreements include a "most favored nations" provision which gives the shippers access to the same rates as other subsequent shippers for equivalent service over the same general path. Ruby maintains that if it agrees to a transportation rate with another shipper that is less than the contracted-for rate (or certain other identified rates for longer contracts), then Ruby will reduce the rate for the most favored nation shippers to match the lower rate. In addition, anchor shippers will be offered the same conditions as other shippers and will have the right to terminate the TSA if Ruby fails to share different rates or conditions with the shipper. Ruby explains that this provision was negotiated in recognition of the substantial business risk taken by the supporting shippers. Ruby claims this provision is similar to other most favored nation provisions approved by the Commission and is consistent with other proceedings where the Commission has permitted anchor shippers to hold most favored nation contract provisions in return for support of the project.

83. We will accept Ruby's most favored nations provision. We have found this type of provision to be acceptable because it only applies to negotiated shippers' rates under the TSAs, it will not provide the anchor shippers with a different quality of service from future shippers, and it will not affect other shippers on the system.[82]

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[81] *Id*. *See also MarkWest*, 125 FERC ¶ 61,165 at P 42; *Southeast Supply Header LLC*, 119 FERC ¶ 61,153 at P 43 (2007); *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,211 at P 52 (2007).

[82] *See CIG*, 106 FERC ¶ 61,275 at P 39; *CIG*, 105 FERC ¶ 61,095 at P 53-56.

d. Maximum Daily Quantity Reduction

84. Ruby states that shippers willing to enter into contracts for terms of 15 years or more have the option to step down their maximum daily quantity (MDQ) rights over the last four years of the contract. PG&E is the only shipper that accepted this contract option, and will thus have the option to reduce its capacity as follows: down to 80 percent of the average contract quantity on the 11th anniversary, 60 percent on the 12th, 40 percent on the 13th, 20 percent on the 14th, and down to 0 percent on the 15th anniversary. Ruby asserts this provision is consistent with other proceedings in which the Commission has allowed expansion shippers to hold step-down rights at the end of the initial contract terms. Consistent with our prior orders, we find that this provision is a permissible non-conforming provision.[83]

D. Accounting

1. Allowance for Funds Used During Construction (AFUDC) Rate

85. Ruby, a newly created company, proposes to calculate its Allowance for Funds Used During Construction (AFUDC) based on its proposed debt and equity capital structure. This approach is consistent with the accounting guidance we have given other newly created companies.[84] Consistent with Commission precedent, Ruby is required to capitalize the actual costs of borrowed and other funds used for construction purposes, not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved.[85]

2. AFUDC Accrual Start Date

86. Ruby filed its application on January 27, 2009, and proposes to accrue AFUDC from June 2007 through February 2011. The effect of Ruby's proposal is that it would begin accrual of AFUDC seven months prior to the initiation of its pre-filing process and 19 months prior to filing its certificate application. Ruby states that the amount of

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[83] *See, e.g., Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259 (2007); *Wyoming Interstate*, 121 FERC ¶ 61,054 (2007).

[84] *See, e.g., Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007); *Port Arthur Pipeline, L.P.*, 115 FERC ¶ 61,344 (2006); *Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331 (2006); *Golden Pass Pipeline,* L.P., 112 FERC ¶ 61,041 (2005).

[85] *Id*.

AFUDC accrued prior to the filing of its certificate application is approximately $4 million. Based upon the information provided by Ruby, we conclude that the accrual of AFUDC should have begun on January 27, 2009, rather than during June 2007. Consequently, Ruby must remove the over-accrual of approximately $4 million of AFUDC recorded prior to the filing of its application on January 27, 2009.

87. Under the Commission's accounting regulations, a company may begin accruing AFUDC on project costs when construction costs are continuously incurred on a planned progressive basis but, for a company constructing a natural gas pipeline, interest should not be accrued for the period of time prior to the date of the application to the Commission for a certificate to construct facilities unless specifically justified. This long standing guidance is in accordance with the requirements of Accounting Release No. 5 (AR-5),[86] *Capitalization of Interest During Construction*, which states, in part:

> Interest during construction may be capitalized starting from the date that construction costs are continuously incurred on a planned progressive basis. Interest should not be accrued for the period of time prior to: … the date of the application to the Commission for a certificate to construct facilities by a natural gas company. Interest accruals may be allowed by the Commission for the period prior to the above dates if so justified by the company.

88. Ruby argues that the Commission should grant the accrual of AFUDC from the period it began actively and continuously developing its proposed project because the proposal is a large-scale infrastructure development that required early financial commitments to obtain materials, acquire rights-of-way, and undertake extensive upfront surveying and engineering work in the initial and stakeholder scoping stages.[87] Ruby asserts that the costs it incurred prior to filing its application include items normally found in the major construction work-in-progress categories and that these costs were incurred relatively continuously. Ruby further states that these costs should not be confused with feasibility study costs in that they are active construction-related costs.

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[86] *Capitalization of Interest During Construction*, Accounting Release No. 5 (Revised), FERC Stats. & Regs. ¶ 40,005 (1968).

[87] In its April 29, 2009 Data Response, Ruby states that these costs included approximately $50 million in pipeline supply payments, approximately $8 million in engineering costs, $10 million in environmental work, and approximately $3 million to secure rights-of-way.

89. Ruby also asserts that pursuant to Order No. 665,[88] certain projects are subject to the Commission's pre-filing process. Ruby argues that to compel project sponsors to incur the costs required for the pre-filing process, and then to deny the project sponsors the opportunity to recover such costs, is inconsistent with the policies of the Commission. Ruby states that in order to comply effectively with the NEPA review and pre-filing process, project sponsors are required to spend capital earlier and to defer the filing of an application until later.[89] Ruby argues that denying a project sponsor the opportunity to recover the carrying costs associated with these necessary pre-construction expenditures forces it to wait until the filing of a pre-filing docket and/or the certificate application before undertaking necessary early activities.

90. Although Ruby asserts that construction costs were continuously incurred on a planned and progressive basis beginning in June 2007, Ruby did not provide sufficient detail to demonstrate that the costs incurred before it filed its certificate application on January 27, 2009, were in fact construction costs, rather than costs related to preliminary survey and investigation type activities. AFUDC should not be accrued on expenditures for materials and supplies, including progress and other payments incurred for the manufacture of pipe, purchased prior to the initiation of construction. Similarly, Commission policy does not allow the capitalization of AFUDC on rights-of-way when such costs are not incurred as part of construction. Furthermore, costs incurred on a relatively continuous basis do not necessarily constitute construction costs incurred on a planned, continuous, and progressive basis.

91. Further, the fact that Ruby participated in the pre-filing process does not, in and of itself, serve as evidence sufficient to justify accrual of AFUDC prior to the date it filed its application.[90] AFUDC is not available for all costs necessarily incurred by a project sponsor to bring a project to fruition. AFUDC can only be accrued on costs incurred during construction of the project. Preliminary survey and investigation costs, including those which may be incurred before or during the pre-filing process, are costs incurred prior to the commencement of construction, and therefore would not constitute construction costs eligible for the accrual of AFUDC.

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[88] *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities,* Order No. 665, FERC Stats. & Regs. ¶ 31,195 (2005).

[89] On January 31, 2008, Ruby received Commission approval to initiate the NEPA pre-filing process in Docket No. PF08-9-000.

[90] *Southern Natural Gas Co.,* 128 FERC ¶ 61,198 at P 43 (2009).

92. For the above reasons, the Commission rejects Ruby's proposed inclusion of AFUDC accrued prior to the date its certificate application was filed. Ruby is directed to reverse the AFUDC accrued between June 2007 and January 27, 2009, the date of the certificate application filing. Additionally, Ruby is directed to adjust all cost-of-service items that are dependent on Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense to appropriately reflect the effect of the reversal of AFUDC accrued prior to the certificate filing date. As discussed above, Ruby is required to file its revised rates and work papers with sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

E. Part 157, Subpart F Blanket Construction Certificate

93. Ruby has applied for a blanket construction certificate under Part 157, Subpart F, of the Commission's regulations to authorize it to perform certain routine activities, which is generally applicable to all natural gas companies. Because Ruby will become a natural gas company upon its acceptance of an NGA section 7 certificate, we will grant Ruby's request for a Part 157, Subpart F, blanket construction certificate if we grant authorization for Ruby's proposed pipeline following completion of our environmental review.

F. Part 284, Subpart G Blanket Transportation Certificate

94. Ruby has also applied for a blanket transportation certificate under Part 284, Subpart G, of the Commission's regulations to authorize it to perform certain routine activities, which is generally applicable to all natural gas companies. Because Ruby will become a natural gas company upon its acceptance of an NGA section 7 certificate, we will grant Ruby's request for a Part 284, Subpart G, blanket transportation certificate if we grant authorization for Ruby's proposed pipeline following completion of our environmental review.

G. Environmental

95. On September 26, 2008, the Commission issued a notice of intent to prepare an environmental impact statement (EIS) for Ruby's proposal.[91] The EIS will include Commission staff's independent analysis of the environmental issues. On June 19, 2009, a draft EIS (DEIS) was issued and mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; individuals who provided scoping comments; affected landowners and individuals who

[91] 73 Fed. Reg. 57347 (2008).

requested the DEIS; new landowners identified as being crossed by route alternatives, either recommended by FERC staff or still under consideration; and the Commission's official service list for this proceeding. After the DEIS was issued, a comment period was allotted for review of the DEIS, with comments due by August 10, 2009.[92] All comments on the DEIS will be considered by the Commission's staff, which will then prepare a final EIS to be considered by the Commission.

H. Request for Extension of DEIS Comment Period

96. On August 11, 2009, the Sierra Club filed a motion to extend for 60 days the comment period for the DEIS. We deny the Sierra Club's motion. As noted above, the DEIS was issued on June 19, 2009, and comments were due by August 10, 2009. However, Commission staff will continue to consider comments received so long as the review of the comments does not delay or disrupt the proceeding.

IV. Summary

97. For the reasons discussed above, we reach a preliminary determination, subject to completion of our environmental review and the fulfillment of all conditions specified in this order, that the benefits of Ruby's proposed project will outweigh any potential adverse effects, consistent with our Certificate Policy Statement, and that the proposed facilities are required by the public convenience and necessity, subject to the conditions identified below and in the body of this order.

The Commission orders:

(A) A preliminary determination is made, on the basis of all pertinent non-environmental matters, that Ruby's application under NGA section 7(c) to construct, operate, and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application, will be required by the public convenience and necessity.

(B) Any certificate and authority issued in a final order in this proceeding will be conditioned, as discussed in this order, on the following:

(1) Ruby's constructing and making available for service the facilities described herein pursuant to paragraph (b) of section 157.20 of the

[92] 74 Fed. Reg. 30560 (2009).

Commission's regulations within two years of a final order in this proceeding;

(2) Ruby'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;

(3) Ruby executing contracts for the levels and terms of service represented in the precedent agreements, prior to commencing construction.

(C) A preliminary determination is made, on the basis of all pertinent non-environmental matters, that a blanket construction certificate will be issued to Ruby under Subpart F of Part 157 of the Commission's regulations.

(D) A preliminary determination is made, on the basis of all pertinent non-environmental matters, that a blanket transportation certificate will be issued to Ruby under Subpart G of Part 284 of the Commission's regulations.

(E) The preliminary determinations in Ordering Paragraphs (A), (C), and (D) contemplate issuance of a final order, following completion of the pending review of all environmental matters raised by the application and issues identified by this order, which determines whether Ruby's proposal is required by the public convenience and necessity, in accordance with NEPA and NGA section 7(c).

(F) Ruby shall maintain separate book, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates.

(G) Ruby's initial rates and tariff are approved, as conditioned and modified herein in the body of this order.

(H) Ruby shall make a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved into effect, including red-lined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* tariff, including those changes discussed in the body of this order.

(I) Ruby shall make a filing within three years after its in-service date, either justifying its existing recourse rates or proposing alternative rates, as discussed in the body of this order.

(J) Ruby shall adhere to the accounting requirements discussed in the body of this order.

(K) The late motions to intervene identified in Appendix B to this order are granted.

(L) The Sierra Club's motion to extend the DEIS comment period by 60 days is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Volumes under Precedent Agreements

Shipper	Term (years)	Capacity (Dth per day)
PG&E – Core Gas Supply	15	250,000
PG&E – Electric Fuels Supply	15	125,000[93]
Anadarko Energy Services Company	10	200,000
BP Energy Company	10	95,000
Shipper A	10	75,000
Shell Energy North America (US), L.P.	10	75,000
Bill Barrett Corporation	10	50,000
Berry Petroleum Company	10	37,857[94]
Marathon Oil Company	10	40,000
Antero Resources Piceance Corporation	10	25,000
Occidental Energy Marketing, Inc.	10	50,000
Shell Energy North America (US), L.P.	9	50,000[95]
Nexen Marketing U.S.A. Inc.	5	25,000
El Paso Marketing, L.P.	5	25,000[96]

[93] The PG&E Electric Fuels Supply agreement provides for an initial volume of 250,000 Dth per day from 7/1/2011 to 10/31/2011. The volume reduces to 125,000 Dth per day for a term of 15 years commencing 11/1/2011.

[94] The initial volume for Bill Berry Corporation is 25,000 Dth per day. At 24 months following the initial in-service date the volume increases to 37,857 Dth per day for the last eight years of the agreement.

[95] This agreement for Shell Energy North America (US), Inc. provides for 25,000 Dth per day from 4/1/2012 to 3/31/2013. The volume increases to 50,000 Dth per day from 4/1/2013 to 2/28/2021.

[96] El Paso Marketing, L.P.'s term commences 5 years after the initial in-service date at the same time Nexen Marketing U.S.A. Inc.'s term expires.

APPENDIX B
Interventions

Parties Filing Timely Motions to Intervene:

Anadarko Energy Services Company
BP Energy Company
Center for Biological Diversity
Chevron U.S.A. Inc.
ConocoPhillips Company
EnCana Marketing (USA) Inc.
Gas Transmission Northwest Corporation
Marathon Oil Company
Niska Gas Storage LLC
Northwest Industrial Gas Users
Occidental Energy Marketing, Inc.
Oregon Department of Energy, Oregon Department of State Lands, Oregon Department of Land Conservation and Development, Oregon Parks and Recreation, and Oregon Department of Forestry (jointly)
Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife (jointly)
Oregon Natural Desert Association and Oregon Wild (jointly)
Pacific Gas and Electric Company
Paiute Pipeline Company
Public Utilities Commission of the State of California
Public Utilities Commission of Nevada
Puget Sound Energy, Inc.
Quality for Animal Life, Inc. and Dick Jones (jointly)
Questar Gas Company
Questar Overthrust Pipeline Company
Shell Energy North America (US), L.P.
Sierra Pacific Power Company d/b/a NV Energy
Southern California Gas Company and San Diego Gas & Electric Company (jointly)
Southwest Gas Corporation
Summit Lake Paiute Tribe, Nevada
Texas Gas Service Company, a division of ONEOK, Inc.
The Utility Reform Network
Toiyabe Chapter of the Sierra Club
Ultra Resources, Inc.
Western Watersheds Project
Wyoming Pipeline Authority

Parties Filing Untimely Motions to Intervene:

Avista Corporation
Defenders of Wildlife
Iberdola Renewables, Inc.
Nexen Marketing U.S.A. Inc.
Northwest Natural Gas Company
Portland General Electric Company