

130 FERC ¶ 61,251  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd.

Docket No. CP09-449-000

ORDER ISSUING CERTIFICATE

(Issued March 26, 2010)

1. On July 29, 2009, and as supplemented on November 5, 2009, Wyoming Interstate Company, Ltd. (WIC) filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing WIC to construct and operate a new Diamond Mountain compressor station in Uintah County, Utah. WIC also requests a predetermination of rolled-in rate treatment for the costs associated with the project and approval of incremental fuel charges for transportation services using capacity created by provided by the proposed compression facilities.
2. For the reasons discussed below, the Commission will issue WIC's requested certificate authorization, as conditioned below, and grant WIC's request for a predetermination of rolled-in rate treatment for the project costs in its next general NGA section 4 rate proceeding, absent a significant change in material circumstances.

**I. Background and Proposal**

3. WIC is engaged in the interstate transportation of natural gas in Wyoming, Colorado, and Utah. WIC's mainline system extends from connections with several interstate pipelines in western Wyoming to its terminus at the Cheyenne Hub in Weld County, Colorado. In December 2007, WIC placed the 124-mile Kanda lateral pipeline into service in order to meet the demand for take-away capacity from the Uintah Basin in eastern Utah.<sup>1</sup> The Kanda lateral extends from the Uintah Basin in Utah and interconnects with WIC's mainline system in Wyoming.

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<sup>1</sup> The Commission's order authorizing the Kanda lateral was issued on June 7, 2007 in Docket No. CP07-14-000. *Wyoming Interstate Co., Ltd.*, 119 FERC ¶ 61,251 (2007), *order on reh'g and clarification*, 121 FERC ¶ 61,135 (2007).

4. WIC states that producers in the Uintah Basin are seeking additional capacity on the Kanda lateral. As a result, WIC is proposing to construct and operate the Diamond Mountain compressor station project. The proposed compressor station will consist of two natural gas-powered Solar Taurus 70 compressor units totaling approximately 20,604 nameplate horsepower on a 20-acre private land parcel located around milepost (MP) 54.8 on the Kanda lateral. The new compression will create up to 180 thousand dekatherms per day (MDth/d) of additional capacity on the Kanda lateral. The estimated capital cost of the project totals approximately \$48.6 million.

5. WIC conducted an open season for additional transportation capacity on its system in February, March, and April 2008. WIC stated that the open season solicited shipper interest for a variety of capacity options with various points of receipt and delivery on WIC's system. The open season also solicited offers for turnback of capacity in lieu of some or all of the proposed facility enhancements. Following its open season, WIC executed two precedent agreements for transportation service at negotiated rates for a total of 180 MDth/d of firm capacity with the Bill Barrett Corporation (Barrett) and the Anadarko Energy Services Company (Anadarko), both of which are currently firm transportation subscribers on the Kanda lateral. The precedent agreements provide for 10-year service agreements beginning on the in-service date of the expansion capacity. Barrett requested a maximum daily quantity of 65 MDth/d and Anadarko requested a maximum daily quantity of 115 MDth/d.<sup>2</sup>

6. For both Barrett and Anadarko, the negotiated rate is \$5.2522 per dekatherm per month (Dth/month), which is equal to the existing Kanda lateral incremental recourse rate and also equal to the rate that Barrett and Anadarko pay for their current contractual services.<sup>3</sup> WIC requests a predetermination of rolled-in rate treatment for the project costs, exclusive of fuel costs to operate the new compression facilities, which WIC proposes to recover through a new incremental charge.

## **II. Public Notice, Interventions, and Comments**

7. Notice of WIC's application was published in the *Federal Register* on August 17, 2009 (74 Fed. Reg. 41,429), with interventions, protests, or comments due on or before August 31, 2009. Timely, unopposed motions to intervene were filed by Anadarko Energy Services Company, Center for Native Ecosystems, Questar Pipeline Company, Questar Overthrust Pipeline Company, State of Utah Public Lands Policy

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<sup>2</sup> Per the WIC agreements dated April 4, 2008, and November 17, 2008, signed by Barrett and Anadarko, respectively.

<sup>3</sup> The precedent agreements for the proposed expansion capacity state that the negotiated rates for the expansion capacity will not change if the recourse rate either increases or decreases.

Coordination Office (Utah PLPCO), and Williams Gas Marketing, Inc.<sup>4</sup> The U.S. Department of Interior's Bureau of Land Management (BLM), Utah PLPCO, and the Center for Native Ecosystems raised environmental concerns regarding the location of the compressor station which have been addressed, as discussed below.

### **III. Discussion**

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

#### **A. The Certificate Policy Statement**

9. On September 15, 1999, the Commission issued a Certificate Policy Statement providing guidance as to how proposals for certificating new construction will be evaluated.<sup>5</sup> The Certificate Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

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

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<sup>4</sup> Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2009).

<sup>5</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

11. In determining the impact that rolled-in pricing for a project would have on a pipeline's existing customers, the Commission calculates the projected project revenue using the pipeline's applicable maximum recourse rate, regardless of whether the pipeline intends to negotiate rates with its shippers. This approach protects the existing customers from potential cross-subsidization in that, if the negotiated rate is lower than the maximum recourse rate, the pipeline would bear the responsibility for any revenue shortfall.

12. As discussed below, projected revenues from the proposed expansion project exceed its costs. Therefore, existing shippers will not subsidize the expansion facilities. The proposed facilities have been designed to transport increased production from the Uintah Basin production area. Thus, WIC's proposal will not replace any firm transportation service on any other existing pipeline and will not adversely impact other pipelines or their customers.

13. Further, the proposed facilities have been designed in a manner to minimize the impact on landowners. There are no residences within one mile of the proposed compressor station and there are no planned residential developments within 0.25 mile of the site. All construction activities will occur on privately-owned land and no landowners have protested or filed comments on WIC's proposal.

14. On balance, the economic benefits of WIC's proposal outweigh any potential adverse impacts on the interests discussed. Based on this finding and our environmental analysis and conditions discussed below, we further find that certification of the project under section 7 of the NGA is required by the public convenience and necessity.

#### **B. Rolled-In Rates and Fuel Treatment**

15. WIC proposes to establish the existing WIC Kanda lateral incremental rate as the initial recourse rates for the proposed expansion service. WIC also seeks authorization to roll the facility costs of two compressor units totaling 20,604 horsepower into the existing rates for service on the Kanda lateral facilities in its next section 4 rate case. WIC states that, excluding fuel costs, the revenue derived from the new service agreements exceed the cost of service in Year 1 and in every year thereafter.<sup>6</sup> Therefore, according to WIC, such rolled-in rate treatment will not result in a subsidization of the compression facilities by existing shippers.

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<sup>6</sup> See September 10, 2009 WIC response to staff data request at question 2.

16. WIC's work papers show an \$11,265,137 first-year cost of service for the project.<sup>7</sup> As indicated in WIC's application, the resulting first-year unit cost of capacity of \$5.2184/Dth is less than the current Kanda lateral reservation rate of \$5.2522/Dth.<sup>8</sup> WIC asserts that the all of the capacity that will result from the compressor station project is subscribed under negotiated rate contracts.

17. WIC has demonstrated that over the initial 10 years of service, projected revenues will exceed the cost of service by over \$17 million. Therefore, we will grant the request for a predetermination that WIC may roll the costs of the expansion project into the existing WIC Kanda lateral incremental reservation rates in a future section 4 rate proceeding absent any material change in circumstances.

18. WIC seeks authorization to collect the incremental fuel costs for services associated with the project through new incremental charges called the "Diamond Mountain Incremental Fuel Charge." WIC states that the existing Kanda lateral has no compression and no incremental fuel charge attributed to it. Therefore, to recover the costs of fuel to operate the new compression facilities, WIC proposes to establish an incremental fuel charge. The fuel charge would apply to the contracts for firm services using the incremental capacity that will be created, as well as to all new interruptible and secondary firm contracts using the Kanda lateral.<sup>9</sup>

19. Since the project is a compression-based expansion and existing shipper contracts on the system are exempt from fuel charges, we find that the proposed incremental fuel charge is appropriate. Therefore, we will approve WIC's proposed Diamond Mountain Incremental Fuel Charge. WIC must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rate in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceeding. Such a procedure will protect its recourse rate shippers against inappropriate cost-shifting associated with negotiated rates and discount adjustments.

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<sup>7</sup> WIC proposes a \$11,265,137 cost of service that includes a \$1,245,089 operation and maintenance expense; a \$2,856,869 depreciation expense (at 5.88 percent depreciation rate); a \$6,713,128 pre-tax return allowance; and \$450,051 in taxes other than income taxes.

<sup>8</sup> See Exhibit N of WIC's application at page 4.

<sup>9</sup> WIC states that the incremental fuel charge for the expanded transportation service using the new facilities is anticipated to be 1.18 percent. See revised Exhibit N of WIC's November 5, 2009 supplement at page 5.

### C. Accounting

20. WIC proposes to capitalize an allowance for funds used during construction (AFUDC) of approximately \$2,569,500 on the project, which includes the compounding of AFUDC on a monthly basis. However, the Commission's regulations do not permit monthly compounding of AFUDC and limit the compounding of AFUDC to be no more frequent than semi-annual.<sup>10</sup> Accordingly, we will require WIC to modify its AFUDC estimate to reflect the compounding of AFUDC on only a semi-annual basis.

21. Additionally, WIC filed its application for a certificate of public convenience and necessity to construct and operate the project on July 29, 2009. WIC proposes to start the accrual of AFUDC beginning September 2008,<sup>11</sup> or 11 months prior to filing its certificate application, and continuing accruing AFUDC through January 2011.<sup>12</sup> The amount of AFUDC accrued prior to the filing of the certificate application is approximately \$32,837. Consistent with the Commission's revised policy on the commencement of AFUDC for natural gas pipelines in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company and Southeast Supply Header, LLC*, we will allow WIC to include its proposed AFUDC accrual in its initial rates, subject to WIC filing a representation that the proposed AFUDC accruals comply with the revised policy conditions.<sup>13</sup> Furthermore, if WIC determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it must revise all cost-of-service items dependent upon Gas Plant in Service, such as Income Taxes, Depreciation Expense, Return, and Interest Expense. WIC must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to its filing the tariff sheets to implement those rates.

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<sup>10</sup> *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 (2005). See *Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D) to Provide for the Determination of Rate for Computing Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports*, Order No. 561, 57 FPC 608 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978).

<sup>11</sup> WIC asserts that it began environmental and survey work in September 2008.

<sup>12</sup> See WIC's December 8, 2009 response to staff data request.

<sup>13</sup> See *Florida Gas Transmission Company LLC*, 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Company and Southeast Supply Header, LLC*, 130 FERC ¶ 61,193 (2010). The revised policy conditions in these orders allow natural gas pipelines to begin accruing AFUDC on construction projects when the following conditions are met: (1) capital expenditures for the project have been incurred, and (2) activities that are necessary to get the construction project ready for its intended use are in progress.

#### **D. Engineering Review**

22. The Commission's staff performed an engineering analysis which confirms that WIC has appropriately designed its Diamond Mountain compressor station to provide up to 180 MDth/d of incremental service on the Kanda lateral.<sup>14</sup>

#### **E. Environmental Review**

23. On September 4, 2009, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Diamond Mountain Compressor Station Project and Request for Comments on Environmental Issues* (NOI).<sup>15</sup> The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected landowners.

24. Prior and subsequent to the Commission's notice of WIC's application, BLM, Utah PLPCO, the Utah Division of Wildlife Resources (Utah DWR), and the U.S. Department of the Interior's Fish and Wildlife Service (FWS) raised concerns regarding the location of the compressor station. The primary concern of these agencies was the proximity of the originally proposed location at MP 53 on the Kanda lateral to active greater sage-grouse lekking areas.<sup>16</sup> On March 5, 2010, FWS determined that the greater sage-grouse did not warrant Endangered Species Act protection. However, the NOI, which was issued prior to the FWS' determination, identified several alternative sites preferred by the resource agencies to avoid lekking areas. No comments to the NOI were received. In response to the agency concerns, WIC filed supplemental information and modified its proposal on November 5, 2009, to adopt one of the alternative sites (i.e., the alternative site at MP 54.8 on the Kanda lateral) included in the NOI as its newly-proposed site.

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<sup>14</sup> WIC's compressor station nameplate horsepower rating is above the 15,000 horsepower minimum threshold for waste-heat recovery identified in the Interstate Natural Gas Association of America's White Paper entitled "Waste Energy Recovery Opportunities for Interstate Natural Gas Pipelines." However, due to the location of the Diamond Mountain compressor station and its resulting elevation and ambient temperatures, the combined site rating for the two compressor units is 12,600 horsepower, well below the initial requirements.

<sup>15</sup> 74 Fed. Reg. 47,240 (September 15, 2009).

<sup>16</sup> "Lek" refers to locations where male sage-grouse congregate and perform a "strutting display" for several hours in the early morning and evening during the spring months. Leks are generally open areas adjacent to dense sagebrush stands, and the same lek may be used by grouse for decades.

25. To satisfy the requirements of the National Environmental Policy Act of 1969,<sup>17</sup> our staff prepared an environmental assessment (EA) for WIC's proposal that was issued for a 30-day comment period and placed into the public record on January 25, 2010.<sup>18</sup> The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. The EA found that WIC's proposed compressor station site minimizes impacts on sage-grouse, addressed the resource agencies' concerns with WIC's original compressor station site, and found that the proposed site is environmentally preferable to the original site. All landowners affected by the original and revised sites were included on the EA environmental mailing list.

26. The Commission received four comments on the EA from the FWS, the Utah PLPCO, the U.S. Department of Agriculture's Forest Service (Forest Service), and the BLM's Utah State Office. While the FWS and Utah PLPCO generally agree that the proposed compressor station site will have less impact on sage-grouse than the original site, they remain concerned that the timing of construction could result in impacts on sage-grouse. The EA discussed the potential impacts of construction noise on the nearest sage-grouse lek, which is 1.2 miles from the proposed site. The EA concluded that the estimated 3.0 decibel increase would be well below the Utah DWR and FWS suggested limit of 10 decibels and is, therefore, not likely to jeopardize the continued existence of the sage-grouse.

27. The FWS suggested that WIC could minimize disturbance of any sage-grouse leks by constructing outside of the lekking and nesting season (March 1 through June 15) or ensuring that construction activities take place after 9:00 a.m. WIC has stated that it needs to begin construction of its compressor station in April to meet its November in-service date. However, in a letter filed on March 1, 2010, WIC stated that it would meet with the FWS and Utah DWR to further address the agencies' construction-related sage-grouse concerns, including the time construction would begin each day. To ensure protection of sage-grouse nesting activity, WIC has committed to conducting a breeding bird survey at the compressor station site prior to construction, and it will buffer any nest by 75 yards to avoid construction impacts until the nest is no longer active or nesting is complete. Also, WIC will limit access to the compressor station to existing public roads. As stated in the March 1, 2010 letter, WIC intends to develop a "sage-grouse construction and mitigation plan" with input from the FWS and the Utah DWR. This plan will be included in WIC's Implementation Plan, which requires Commission approval. We believe these measures, in addition to those proposed previously by WIC, will continue to protect this sensitive species.

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<sup>17</sup> 42 U.S.C. §§ 4321 *et seq.* (2006).

<sup>18</sup> 75 Fed. Reg. 5,074 (February 1, 2010).

28. The FWS also recommended that WIC implement visual and noise mitigation measures to minimize the operational impact on sage-grouse. As stated in the EA, WIC has already committed to painting the buildings a color commensurate with the surrounding landscape to reduce visual impact. In regard to noise impact, Appendix A of this order includes environmental condition 13, which requires WIC to ensure that the operational noise of the compressor station does not exceed 41 decibels on an A-weighted scale at the nearest lek. This requirement ensures that WIC complies with the Utah DWR and FWS noise recommendation to limit any noise increase to no more than 10 decibels above ambient noise levels. Based on WIC's proposed compressor station design and our noise mitigation condition, we find that WIC has adequately mitigated both noise and visual impacts of operation on sage-grouse to the greatest extent practicable.

29. The FWS further recommended use of the *Suggested Practices for Avian Protection on Power Lines, the State of the Art in 2006*, regarding the construction of a new 2.4-mile-long nonjurisdictional power line which will be constructed by Moon Lake Electric Association, Inc. (Moon Lake) to provide electrical power to utility facilities in the compressor station site. The EA discusses this facility and states that Moon Lake plans to place anti-perching devices on the power line to protect sage-grouse from predators, such as raptors. However, the Commission encourages WIC to ensure that Moon Lake designs its power line in accordance with the FWS's recommended guidance.

30. The Forest Service and the BLM, Utah State Office, comments pertain to air emissions. The Forest Service is specifically concerned with the proximity of the compressor station site to the nearby Ashley National Forest and the Flaming Gorge National Recreation Area, 10 and 15 miles away, respectively, and the cumulative impacts from numerous minor sources on regional air quality. The BLM is concerned with particulate matter with an aerodynamic diameter less than 2.5 microns and ozone concentrations in Uintah County, Utah. The BLM suggested that the state of Utah's Best Available Control Technology (BACT) determination for the proposed source should be made with these pollutants in mind. The EA reported that the air dispersion modeling conducted by WIC, as required by the Utah Department of Air Quality (Utah DAQ), demonstrated that the modeled pollutant concentrations from the new compressor station added to the background pollutant concentrations would not exceed the U.S. Environmental Protection Agency's National Ambient Air Quality Standards (NAAQS). As stated in the EA, the proposed project will be subject to New Source Review (NSR) permitting by the state of Utah. The air quality assessment for NSR includes an estimation of emissions, an analysis of BACT for the proposed sources, and an assessment to demonstrate that the sources would not cause or contribute to a violation of the NAAQS. WIC will be required to comply with any emissions control technology, including BACT, that the Utah DAQ may impose through its permitting authority. In

addition, environmental condition 8 to this order requires WIC to file a Utah DAQ Approval Order prior to commencing construction of the Diamond Mountain compressor station.

31. The EA discussed potential cumulative impacts and concluded that there will be no significant cumulative impact on air quality as a result of the project. Although the EA concluded that no significant impact on air quality will result from construction or operation of the proposed project, we encourage WIC to consult with the Forest Service in coordination with the Utah DAQ regarding air quality impacts on the nearby public recreational areas.

32. Based on the discussion in the EA, we conclude that our approval of WIC's proposal, constructed and operated in accordance with WIC's application and supplements and in compliance with the environmental conditions in the Appendix to this order, does not constitute a major federal action significantly affecting the quality of the human environment.

33. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.<sup>19</sup>

#### **IV. Conclusion**

34. For the reasons discussed above, the Commission concludes that WIC's proposal to construct and operate the project, as described herein, is required by the public convenience and necessity.

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

#### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Wyoming Interstate Company, Ltd. authorizing it to construct and operate the Diamond Mountain Compressor Station Project as described herein and in the application.

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<sup>19</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(B) WIC shall construct and make available for service the facilities authorized within one year from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(C) The certificate issued to WIC is conditioned on its compliance with the Natural Gas Act and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(D) WIC must file any nonconforming negotiated rate agreements or numbered tariff sheets at least 30, but not more than 60 days prior to the commencement of service using the expansion facilities, as discussed in the body of this order.

(E) WIC must maintain separate books and records for transportation associated with the project, as discussed in the body of this order.

(F) WIC's request to use the existing Kanda lateral recourse rate as the project initial recourse rate is granted.

(G) WIC's request for a predetermination favoring rolled-in rate treatment for the costs of the project in its next general NGA section 4 rate proceeding at which the Kanda lateral rate is at issue is granted, subject to a significant change in material circumstances.

(H) WIC shall modify its AFUDC estimate to reflect the compounding of AFUDC on only a semiannual basis.

(I) WIC shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if WIC determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. WIC must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

(J) WIC and its representations made with respect to AFUDC accruals are subject to audit to determine whether it is in compliance with the revised policy and related Commission rules and regulations.

(K) The certificate issued in Ordering Paragraph (A) above is conditioned on WIC's compliance with the environmental conditions included in the Appendix to this order.

(L) WIC shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of an environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies WIC. WIC shall file written confirmation of such notification with the Office of the Secretary within 24 hours.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### Environmental Conditions for Wyoming Interstate Company's Project in Docket No. CP09-449-000

As recommended in the EA, this authorization includes the following conditions. As stated in the conditions, "file" means to file with the Secretary of the Commission.

1. WIC shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the Environmental Assessment (EA), unless modified by the Commission order. WIC must:
  - a. request any modification to these procedures, measures, or conditions in a filing;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Commission's order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.
3. **Prior to any construction**, WIC shall file an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, WIC shall file any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by

the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by the *WIC Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements, which do not affect other landowners or sensitive environmental areas, such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, WIC shall file an Implementation Plan for review and written approval by the Director of OEP. WIC must file revisions to the plan as schedules change. The plan shall identify:

- a. how WIC will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Commission order;
  - b. how WIC will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions WIC will give to all personnel involved with construction and restoration (both the initial and the refresher training given as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of WIC's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) WIC will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, WIC shall file updated status reports on a **monthly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on WIC's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, and work planned for the following reporting period;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

- e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints, which may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by WIC from other federal, state, or local permitting agencies concerning instances of noncompliance, and WIC's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, WIC shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. WIC must receive written authorization from the Director of OEP **before placing into service** the Diamond Mountain compressor station. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, WIC shall file an affirmative statement, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions WIC has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **WIC shall not begin construction** of the Diamond Mountain compressor station **until**:
- a. WIC files:
    - (1) a clarification of whether the entire station site was covered by the cultural resources survey, and either a corrected figure or survey report for any areas remaining to be surveyed; and
    - (2) the Utah State Historic Preservation Office's comments on the cultural resources survey reports; and
  - b. the FERC staff reviews and the Director of OEP approves the cultural resources report(s), and notifies WIC in writing that construction may proceed.

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

12. **Prior to construction**, WIC shall file its *Plan for Unanticipated Historic Properties and Human Remains* that includes a revised section 4.1 regarding state law and the Native American Grave Protection Repatriation Act.
13. WIC shall make all reasonable efforts to ensure its predicted noise levels from the Diamond Mountain compressor station are not exceeded at the nearby noise-sensitive area (NSA) and file noise surveys **no later than 60 days** after placing the Diamond Mountain compressor station into service. If the noise attributable to the operation of all of the equipment at the Diamond Mountain compressor station at full load exceeds a day-night level of 41 decibels at the nearby NSA, WIC shall install additional noise controls to meet the level **within 1 year** of the in-service date. WIC shall confirm compliance with the above requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.