

132 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Paiute Pipeline Company

Docket No. CP10-41-000

ORDER ISSUING CERTIFICATE

(Issued August 23, 2010)

1. On January 12, 2010, Paiute Pipeline Company (Paiute) filed an application, as supplemented on July 22, 2010, in Docket No. CP10-41-000 pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities in Douglas and Washoe Counties, Nevada (the 2010 Expansion Project) to provide an additional 2,265 dekatherms per day (Dth/d) of additional firm transportation service on its South Tahoe Lateral. As discussed below, the Commission finds that Paiute's 2010 Expansion Project is required by the public convenience and necessity, and issues Paiute its requested certificate authorization, subject to conditions.

I. Background and Proposal

2. Paiute is a Nevada corporation with its principal place of business located in Las Vegas, Nevada. Paiute is a wholly-owned subsidiary of Southwest Gas Corporation.

3. Paiute owns and operates an interstate pipeline system which extends from an interconnection with Northwest Pipeline GP (Northwest) at the Idaho-Nevada state line to the California-Nevada state line near the north and south ends of Lake Tahoe, where Paiute delivers natural gas into the facilities of a local distribution company (LDC). Paiute also interconnects with the interstate pipeline facilities of Tuscarora Gas Transmission Company (Tuscarora) at the Wadsworth Junction on Paiute's mainline near Wadsworth Junction.

4. Paiute received non-binding letters of intent from three prospective shippers following an initial open season and solicitation for capacity turn-back held between December 19, 2008, and January 23, 2009. Subsequently, one of the prospective shippers declined to execute a Precedent Agreement and terminated its participation in the 2010

Expansion Project. Paiute then held a supplemental open season between December 10 and December 17, 2009, to determine if any other prospective shippers were interested in the firm transportation capacity originally requested by the declining shipper. Following the close of the supplemental open season, Paiute executed binding 10-year precedent agreements for a total incremental capacity of 2,265 Dth/d with Southwest - Northern California (1,657 Dth/d) and Southwest - Northern Nevada (608 Dth/d) from Wadsworth Junction to their various city gates. Paiute states that no customers offered to turn-back capacity during either open season.

5. To provide additional service, Paiute proposes to construct and operate approximately 0.9 mile of new 12-inch diameter pipeline, looping Paiute's existing South Tahoe lateral in Douglas County; replace an existing 6-inch filter with an 8-inch filter at the South Lake Tahoe City Gate delivery point in Douglas County; replace the existing 3-inch pressure regulator and 4-inch strainer with a 6-inch filter at the Stateline City Gate No. 4 delivery point in Douglas County; and replace the existing 12-inch turbine meter 45-degree rotor blade with a 30-degree turbine meter module at the Wadsworth Pressure Limiting Station in Washoe County. These facilities will allow Paiute to provide the proposed service from the Wadsworth Junction receipt point to delivery points located at or near the terminus of Paiute's south Tahoe Lateral. Paiute states that the rights-of-way for the proposed pipeline facilities will parallel and overlap the existing Paiute rights-of-way or will follow previously disturbed utility and roadway lands. The other facility modifications will take place within the existing meter stations' boundaries.

6. Paiute estimates that the proposed facilities will cost \$2,387,000. Paiute proposes to charge its 2010 Expansion Project customers an incremental reservation rate of \$15.1594 per Dth under its FERC Gas Tariff Rate Schedule FT-1.

II. Notice and Interventions

7. Public notice of Paiute's application was published in the *Federal Register* on February 1, 2010 (75 Fed. Reg. 5072). The Office of Attorney General for the State of Nevada, Bureau of Consumer Protection; Clint and Shawna Purvance (the Purvances), property owners; Sierra Pacific Power Company; and Southwest Gas Corporation, in support, filed timely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.¹

8. Ahoe Pines, LLC (Aho Pines) and William Cole (William Cole), property owners, filed untimely motions to intervene. We find that granting the late motions to intervene will not cause undue delay, disrupt, or otherwise prejudice this proceeding or

¹ 18 C.F.R. § 385.214(a)(3) (2010).

the parties to this proceeding. Therefore, we will grant Ahoe Pines' and William Cole's late motions to intervene pursuant to Rule 214 of the Commission's regulations.²

III. Discussion

9. The facilities Paiute proposes to construct and operate will be used for the transportation of gas in interstate commerce subject to the jurisdiction of the Commission. Therefore, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

10. On September 15, 1999, the Commission issued a Certificate Policy Statement³ on the certification of new interstate natural gas pipeline facilities to provide guidance on how the Commission will evaluate proposals for new construction. In the Certificate Policy Statement, the Commission established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

² 18 C.F.R. § 385.214(d) (2010).

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,746 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

12. Paiute proposes to charge an incremental rate to recover the costs of the 2010 Expansion Project. Accordingly, we find that Paiute has met the threshold requirement that its proposed project may proceed without subsidization by existing shippers.⁴

13. Paiute states that the proposed 2010 Expansion Project will have no adverse impact on existing competing pipelines and their shippers. Tuscarora is the only other interstate pipeline providing service in the western Nevada market area. However, the market area where Paiute is proposing to provide the additional pipeline capacity, along the South Tahoe Lateral downstream of the Wadsworth Junction, is not served by Tuscarora and Tuscarora will not be adversely impacted by the proposed expansion.

14. The intervening landowners all raised the concern that the existing easements on their properties might be expanded excessively to accommodate the project. In a letter filed July 22, 2010, Paiute states that while it has existing easements on these landowners' properties dating back to 1965 that pertain to its original, existing 8-inch South Tahoe Lateral pipeline, the easements are restricted to a single pipeline. Paiute further states that it has been seeking revised easements that would permit a second pipeline to occupy the right-of-way and would realign the right-of-way to center around the two pipelines; Paiute has reached tentative easement agreements with the Purvances and Aho Pines. However, to date, Paiute states it has been unable to reach agreement with William Cole.

15. We find that Paiute has designed its project to have a minimal impact on landowners or communities along the route. A portion of the pipeline will be located in paved roads and the remainder will be within the existing right-of-way. The upgrading of meters and control valves will take place within the existing boundaries of the meter stations involved.

16. Paiute will need to revise some of its existing easements to provide for the placement of a second pipeline within the existing right-of-way. If Paiute is unable to reach an agreement with an individual property owner, issues of compensation will be addressed in an eminent domain proceeding.⁵

⁴ See *Colorado Interstate Gas Company*, 131 FERC ¶ 61,086, at 61,436 (2010); *Tennessee Gas Pipeline Company*, 131 FERC ¶ 61,140, at 61,596 (2010); *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,019, at 61,083 (2010); *Florida Gas Transmission Company, LLC*, 129 FERC ¶ 61,150, at 61,644 (2009).

⁵ Paiute's application to construct the 2010 Expansion Project was filed pursuant
(continued...)

17. For all of these reasons, we find that Paiute's proposed 2010 Expansion Project meets the requirement of the Certificate Policy Statement and is required by the public convenience and necessity.

B. Rates

18. Paiute is proposing to charge Southwest - Northern California and Southwest - Northern Nevada an incremental monthly reservation charge of \$15.1594 per Dth of contract demand. Paiute proposes to make the proposed incremental rate effective on the first day of the month following the commencement of service through the proposed facilities. Paiute calculated the proposed \$15.1594 per Dth incremental reservation rate using a cost of service of \$2,387,000 and billing determinants of 2,265 Dth per day. Paiute used the same depreciation, return and property tax rates that were utilized in the settlement of its general section 4 rate proceeding in Docket No. RP09-406-000, which the Commission approved on March 25, 2010.⁶ The Commission finds that Paiute's proposed incremental rate is properly designed to fully recover the costs associated with the 2010 Expansion Project. The Commission also finds that the proposed incremental rate substantially exceeds the currently effective \$9.1951 per Dth system reservation charge approved in Docket No. RP09-406-000. Accordingly, we find it is appropriate that the costs of the proposed facilities be recovered through an incremental rate in order to prevent Paiute's other shippers from subsidizing the new service to Southwest - Northern California and Southwest - Northern Nevada.

C. Tariff Sheets

19. Paiute submitted Pro Forma Sheet Nos. 10 and 21 to its FERC Gas Tariff, Second Revised Volume No. 1-A, to reflect the tariff revisions that will result from the instant proposal. Pro Forma Sheet No. 10 adds the proposed \$15.1594 incremental rate to the current tariff sheet and Pro Forma Sheet No. 21 describes the proposed incremental charge and identifies the two parties to whom the charge applies. Paiute's initial rates and tariff sheets are approved. Paiute states that, between 30 and 60 days prior to the anticipated date of commencement of service through the proposed facilities, it will file actual tariff sheets to reflect a proposed incremental reservation charge based upon the estimated actual costs of construction known at that time.

to NGA section 7(c). When the Commission issues a certificate of public convenience and necessity under section 7(c), the certificate holder is granted the right of eminent domain under NGA section 7(h).

⁶ *Paiute Pipeline Company*, 130 FERC ¶ 61,245 (2010).

20. If Paiute desires to make any other rate changes not specifically authorized by this order prior to placing its facilities into service, including revising the initial incremental rate authorized herein to reflect actual construction costs, it must file under section 7(c) to amend this authorization sufficiently in advance of its desired in-service date to allow the Commission time to analyze and act on its proposal. In that filing, Paiute will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are placed in service, Paiute must make a NGA section 4 filing to change its rates to reflect any revised construction and operating costs.

IV. Environment

21. On March 16, 2010, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed 2010 Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. No responses to the NOI were received.

22. To satisfy the requirements of the National Environmental Policy Act, the Commission's staff prepared an environmental assessment (EA) for Paiute's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. The EA was placed into the public record on July 23, 2010.

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

24. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷

⁷ 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

(continued...)

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Paiute pursuant to section 7(c) of the NGA to construct and operate facilities as described and conditioned in the body of this order and more fully described in Paiute's application and supplements.

(B) The authorization granted in Ordering Paragraph (A) above is conditioned upon Paiute's compliance with section 157.20(a), (c), (e), and (f) of the Commission's regulations.

(C) Paiute must execute firm contracts equal to the levels and terms of service represented in the precedent agreements prior to commencing service.

(D) Paiute's proposed initial rate for firm transportation service is approved.

(E) Paiute is directed to file the actual tariff sheets that comply with the requirements contained in the body of this order at least 30 but not more than 60 days prior to the commencement of service under the instant expansion project.

(F) Paiute shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Paiute. Paiute shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) Paiute shall comply with the environmental conditions set forth in the Appendix.

(H) The facilities authorized in this order shall be completed and placed into operation within one year of the date of issuance of this order in compliance with section 157.20(b) of the Commission's regulations.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions for the Paiute 2010 Expansion Project

1. Paiute 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 order. Paiute must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Paiute shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would 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 location(s) shall be as shown in the EA, and as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Paiute shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the 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.

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

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction** begins, Paiute shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Paiute must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Paiute would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Paiute would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;

- d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Paiute would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), and specific portion of Paiute's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Paiute would follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Paiute shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
8. Paiute shall **not begin construction** of facilities, and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads until it files with the Secretary documentation that it provided the SHPO with a copy of the Unanticipated Discovery Plan, the SHPO's comments on the plan, and the Director of OEP approves the plan and notifies Paiute in writing that construction may proceed.
9. Beginning with the filing of its Implementation Plan, Paiute shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Paiute's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received Paiute from other federal, state, or local permitting agencies concerning instances of noncompliance, and Paiute's response.
10. Paiute must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Paiute shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Paiute 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.