

133 FERC ¶ 61,044  
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.

Kinder Morgan Interstate Gas Transmission LLC

Docket No. CP10-472-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION AND  
OPERATION OF FACILITIES UNDER BLANKET CERTIFICATE

(Issued October 15, 2010)

1. On July 20, 2010, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) filed a prior notice request pursuant to section 7 of the Natural Gas Act (NGA)<sup>1</sup> and sections 157.205, 157.208, and 157.210 of the Commission's regulations to undertake under its Part 157 blanket certificate a replacement of its Franklin to Hastings Pipeline and construction of certain ancillary facilities.<sup>2</sup>
2. On September 24, 2010, Seminole Energy Services, LLC (Seminole) filed a motion to intervene and protest to KMIGT's prior notice filing. On September 29, 2010, KMIGT filed an answer to the protest, and requested a waiver of the 30-day reconciliation period provided for by the blanket certificate regulations in prior notice proceedings. On October 5, 2010, Seminole filed an answer, and opposes a waiver of the reconciliation period. On October 7, 2010, KMIGT filed an answer.
3. For the reasons discussed herein, we will deny Seminole's protest, grant the waiver of the 30-day reconciliation period, and authorize KMIGT to replace the subject pipeline and construct ancillary facilities under its blanket certificate.

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<sup>1</sup> 15 U.S.C. § 717 (2006).

<sup>2</sup> 18 C.F.R. §§ 157.205, 157.208, and 157.210 (2010).

## **I. Background and Proposal**

4. KMITG's predecessor (Kansas-Nebraska Natural Gas Company, Inc.) was authorized in Docket No. G-683<sup>3</sup> to, among other things, construct and operate the 16-inch diameter Franklin and Hastings Pipeline located in Adams County, Nebraska. The pipeline was built in 1946 during an expansion of KMITG's interstate pipeline system. Since its construction in 1946, the pipeline has been in continuous service transporting natural gas in interstate commerce.

5. On March 9, 2010, KMITG lost service temporarily along a section of the 11.4-mile Franklin to Hastings Pipeline due to a leak in the pipeline.<sup>4</sup> KMITG determined that the leak occurred in a "wrinkle bend,"<sup>5</sup> and upon further investigation, found that the Franklin to Hastings Pipeline contains over 120 wrinkle bends that could potentially cause more leaks to develop on the pipeline. Consequently, KMITG determined that portions of the 16-inch pipe would have to be replaced.

6. On April 7, 2010, KMITG submitted an Incident Report to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA), and subsequently had numerous conversations with PHMSA to determine how to proceed with the replacement of the 11.4 miles of pipeline. As an interim solution, KMITG reduced the operating pressure of the Franklin to Hastings Pipeline from 656 pounds per square inch gauge (psig) to 550 psig. KMITG also agreed to replace, by the end of 2010, the wrinkle bends in the approximately 12,000 contiguous feet of pipe running through High Density Areas<sup>6</sup> (HDA) along the Franklin to Hastings Pipeline.

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<sup>3</sup> 5 FPC 432 (1946).

<sup>4</sup> On March 16, 2010, KMITG reported the service interruption to the Commission pursuant to the regulations at 18 C.F.R. § 260.9(b) (2010).

<sup>5</sup> "Wrinkle bending" was a common technique of bending pipe used in pipeline construction during the 1940s, when the Franklin to Hasting Pipeline was installed. The process involved heating the pipe and then mechanically bending it to conform to the contour of the land and route prior to laying the pipe in the ground.

<sup>6</sup> "High Density Areas" refer to Class 2 and Class 3 locations: PHMSA regulations define a Class 2 location as any class location unit (i.e., an area 220 yards on either side of a pipeline) that has more than 10 but fewer than 46 buildings intended for human occupancy. A Class 3 location has 46 or more buildings intended for human

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7. In response to the developing market for natural gas and to develop firm transportation capacity to serve ethanol production facilities in the Midwest (particularly in the corn belt of Nebraska), KMIGT held an open season from July 2, 2010, through July 9, 2010, seeking support to expand its firm transportation capacity, and disclosing the terms of a pre-arranged shipper agreement to acquire 10,000 dekatherms per day (Dth/d) of firm transportation capacity. The open season invited other shippers to participate in the expansion, or alternatively, to tender firm transportation capacity for turn-back to serve the new market demand.

8. No bids were received from other shippers in the open season. As a result, KMIGT entered into a binding precedent agreement with Aventine Renewable Energy – Aurora West, LLC (Aventine) to provide natural gas service to Aventine’s new ethanol plant located near Aurora, Nebraska. The binding precedent agreement provides for the execution of a five-year Rate Schedule FT agreement upon receipt of the authorization requested herein for the entire 10,000 Dth/d offered during the open season.<sup>7</sup>

9. Pursuant to automatic blanket authority,<sup>8</sup> and to effectuate delivery of gas to Aventine, KMIGT purchased from SourceGas Distribution LLC (SourceGas) an existing distribution line to use as a delivery lateral. The line comprises approximately 2.5 miles of 6-inch diameter pipeline running from a section of KMIGT’s Segment 390 York area to the Aventine ethanol plant. Aventine contracted for firm transportation service on

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occupancy or the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly). *See* 49 C.F.R. § 192.5 (2010).

<sup>7</sup> Aventine has elected to pay a fixed negotiated reservation rate for firm transportation service pursuant to Rate Schedule FT. Aventine will also pay commodity rates, fuel and lost and unaccounted for charges, and any other authorized changes under KMIGT’s FERC Gas Tariff as may be applicable. KMIGT’s existing firm transportation rates will be applicable to any recourse rate service provided from the expansion capacity.

<sup>8</sup> 18 C.F.R. § 157.208(a) allows a blanket certificate holder to undertake certain minor activities automatically if the costs fall below a threshold level. Such facilities must be reported in KMIGT’s 2010 annual blanket report to be filed with the Commission on or before May 1, 2011.

KMIGT using the distribution line. KMIGT states that it is currently serving Aventure pursuant to a short-term Firm Transportation Agreement.<sup>9</sup>

10. On July 20, 2010, KMIGT filed the instant request for blanket authorization under the Commission's prior notice procedures<sup>10</sup> to: (i) replace the approximately 11.4 miles of the 16-inch Franklin to Hastings Pipeline located in Adams County, Nebraska with 20-inch diameter pipe; and (ii) construct certain ancillary facilities. KMIGT states that the construction of the replacement facilities will permit KMIGT to replace the affected wrinkle bend segments and return to a 656 psig pressure and create incremental capacity to serve Aventure. KMIGT estimates the total cost of the project to be approximately \$23,511,000.

## **II. Notice, Interventions and other Pleadings**

11. On July 26, 2010, the Commission issued a notice of KMIGT's prior notice request.<sup>11</sup> The deadline for filing interventions and protests in response to a prior notice filing is 60 days following the date of issuance of the notice.<sup>12</sup> The 60-day filing deadline fell on September 24, 2010.

12. Pursuant to section 157.205(h) of the regulations, authorization to construct and operate qualifying facilities under a blanket certificate is automatic so long as no protests are filed by the 60-day deadline. If a protest is timely filed and is not withdrawn within 30 days after the 60-day notice period (30-day "reconciliation period"), the prior notice request proceeds as an application under section 7(c) of the NGA for case-specific authorization.<sup>13</sup>

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<sup>9</sup> It is not clear from KMIGT's filings precisely when it purchased the SourceGas line, or when KMIGT contracted with, and began service to, Aventure.

<sup>10</sup> 18 C.F.R. § 157.208(b) allows the holder of a blanket certificate to undertake certain activities without specific Commission authorization if the project cost falls below a threshold level. These activities are not so minor as to qualify for automatic authorization, and therefore the cost threshold is higher, and the activities are subject to certain reporting and notice and protest requirements, as enumerated below.

<sup>11</sup> 18 C.F.R. § 157.205(d). Notice of KMIGT's prior notice request was also published in the *Federal Register* on August 2, 2010. See 75 Fed. Reg. 45,111.

<sup>12</sup> *Id.*

<sup>13</sup> 18 C.F.R. § 157.205(f).

13. As noted above, on September 24, 2010, Seminole filed a motion to intervene and protest.<sup>14</sup> There were no other motions to intervene, notices of intervention or protests to the application.

14. On September 29, 2010, KMIGT filed an answer to Seminole's protest and a request for a waiver of the 30-day reconciliation period. On October 5, 2010, Seminole filed a motion for leave to reply to KMIGT's answer, and opposition to the waiver request. On October 7, 2010, KMIGT filed a motion for leave to reply to Seminole's October 4 answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,<sup>15</sup> our rules do provide that we may, for good cause, waive this provision.<sup>16</sup> We find good cause to do so in this instance because KMIGT's and Seminole's answers provide information that will assist us in our decision-making process.

### **Seminole's Protest**

15. Seminole notes at the outset that it owns a 10-inch diameter pipeline ("Seminole Line") that interconnects with KMIGT, which was built to serve the then-new Aventine ethanol plant. Seminole states that the line was originally built as a state-regulated Hinshaw pipeline and that during its construction, Aventine declared bankruptcy and therefore was never served by the Seminole Line. Seminole adds that now that Aventine is out of bankruptcy, KMIGT proposes to expand its Franklin to Hastings Pipeline to serve Aventine.<sup>17</sup>

16. Although not made clear in its September 24, 2010 protest, Seminole's October 5, 2010 answer gets to the heart of its issue: that KMIGT improperly segmented what Seminole deems a "single project"- that is, increasing capacity to serve Aventine - into two separate projects: 1) the mainline expansion (replacing the 16-inch pipe with 20-inch pipe); and 2) obtaining a delivery lateral to effectuate delivery to Aventine. Seminole asserts that acquisition of the SourceGas distribution line is inextricably linked to KMIGT's proposal to increase the capacity of the Franklin to Hastings Pipeline, and that

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<sup>14</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. *See* 18 C.F.R. § 385.214 (2010).

<sup>15</sup> 18 C.F.R. § 385.213(a)(2) (2010).

<sup>16</sup> 18 C.F.R. § 385.101(e) (2010).

<sup>17</sup> Seminole Protest at 4. Seminole provides no dates for when the Seminole Line was built, or when Aventine went bankrupt, and emerged out of bankruptcy.

KMIGT's improper segmentation of the project has denied the Commission "the opportunity to consider all elements of the proposal together."<sup>18</sup>

17. To that end, Seminole argues that the Commission must consider the most cost-effective means of effectuating delivery to Aventine, and that the Seminole Line should be considered as a system alternative in the Environmental Assessment (EA) that was prepared for the proposed action. Seminole states this is key because KMIGT's statement that the SourceGas distribution line was the lowest-cost option for delivering gas to Aventine is a "hotly disputed" issue that warrants a hearing before the Commission.<sup>19</sup>

18. Finally, in its October 5 Answer, Seminole, for the first time, questions the jurisdictional status of the delivery lateral KMIGT acquired from SourceGas. In sum, Seminole asserts that in a series of orders starting in 1993, the Commission found that the SourceGas delivery lateral at issue performed a non-jurisdictional function because it served end use customers within a confined geographic area. Seminole states that "KMIGT cannot undo that determination merely by reacquiring the assets — their function has not changed and they continue to perform a non-jurisdictional function."<sup>20</sup>

### **KMIGT's Answers**

19. KMIGT argues that the delivery lateral that KMIGT has acquired from SourceGas under automatic authorization is needed, is currently being used pursuant to a short-term Firm Transportation Agreement, and will continue to deliver gas to Aventine via existing capacity on KMIGT's 16-inch Franklin to Hastings Pipeline. KMIGT adds that this

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<sup>18</sup> Seminole October 5, 2010 Answer at 5 (responding to KMIGT's statement in its September 29, 2010 Answer at 9).

<sup>19</sup> Seminole October 5, 2010 Answer at 9.

<sup>20</sup> Seminole October 5, 2010 Answer at 8. Seminole cites to orders connected with the restructuring of the formerly integrated interstate pipeline/local distribution system known as K N Energy, Inc., in which the Commission approved the separation of facilities performing a jurisdictional interstate transportation function from facilities providing non-jurisdictional local distribution. *K N Energy, Inc. and K N Interstate Gas Transmission Co.*, 63 FERC ¶ 61,155 (1993); *Kinder Morgan Interstate Gas Transmission LLC and K N Energy*, 94 FERC ¶ 61,078 (2001); *Kinder Morgan Interstate Gas Transmission LLC*, 99 FERC ¶ 61,186 (2002).

service will continue regardless of the outcome of the instant proceeding.<sup>21</sup> Thus, the delivery lateral has been, and is, “used and useful upon completion,” which is the definition of a separate project under the Commission’s regulations.<sup>22</sup>

20. KMIGT adds that because the delivery lateral is completely independent from the instant prior notice request, the Commission need not consider the Seminole Line as a system alternative because it is impossible for the Seminole Line to meet both purposes of KMIGT’s proposed prior notice request: 1) use of the Seminole Line would not repair the extensive wrinkle bends contained in the Franklin to Hastings Pipeline; or 2) create incremental capacity required to serve Aventine.<sup>23</sup>

21. For these reasons, KMIGT also opposes Seminole’s request for a hearing to resolve Seminole’s contention that the delivery lateral KMIGT purchased from SourceGas was the lowest-cost option. KMIGT asserts that, notwithstanding that it made this cost determination after holding discussions with both SourceGas and Seminole, the issue is immaterial and irrelevant to this proceeding.”<sup>24</sup>

22. KMIGT also takes issue with Seminole’s claim that KMIGT is barred from using the delivery lateral acquired from SourceGas as part of its jurisdictional system. KMIGT argues that in the orders that Seminole references, the delivery lateral was at that time used by SourceGas, an LDC, to provide retail/delivery functions. Thus, it was properly found by the Commission to be non-jurisdictional. KMIGT states that the function of the delivery lateral has now changed: KMIGT, an interstate pipeline, will use the delivery lateral to provide direct delivery to an industrial end user. KMIGT asserts that this type of service is subject to FERC jurisdiction under the NGA.

### **Commission Finding**

23. Commission regulations prohibit blanket certificate holders from segmenting projects in order to meet the relevant cost limitations.<sup>25</sup> We have previously stated that

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<sup>21</sup> KMIGT October 7, 2010 Answer at 2.

<sup>22</sup> 18 C.F.R. § 157.202(b)(7) (2010) (“*Project* means a unit of improvement or construction that is used and useful upon completion.”).

<sup>23</sup> KMIGT September 29, 2010 Answer at 9-10.

<sup>24</sup> *Id.*

<sup>25</sup> 18 C.F.R. §§ 157.208(a), 157.208(b). *See also El Paso Natural Gas Co.*, 95 FERC ¶ 61,461 (2001) (blanket regulations “are intended to prevent pipelines from

this prohibition is intended to preclude projects that would not be functional without additional construction.<sup>26</sup>

24. We find that KMIGT did not improperly segment the instant proposal and KMIGT's earlier acquisition of the SourceGas delivery lateral. The latter is currently serving Aventine pursuant to a short-term Firm Transportation Agreement. This service will continue regardless of the outcome of this proceeding, in which KMIGT seeks to replace deteriorating pipe and increase capacity on the Franklin to Hastings Pipeline to provide service to Aventine above and beyond their current arrangement. Accordingly, KMIGT's acquisition of the delivery lateral under automatic blanket authority is a stand-alone action, the delivery lateral is "used and useful," and the action is independent of the proposal before us.<sup>27</sup>

25. Even if we assume, *arguendo*, that KMIGT improperly segmented the two projects, we fail to see how we could grant the relief Seminole seeks. Taken to its logical conclusion, Seminole wants KMIGT to purchase the Seminole Line to service Aventine. KMIGT has chosen not to. We will not substitute our judgment for KMIGT's business decision, nor could we order it to acquire the Seminole Line.<sup>28</sup> Moreover, because KMIGT purchased an existing delivery lateral, rather than propose to build a new one, Seminole has alleged no environmental impacts that could potentially be eliminated or minimized by using the Seminole Line. Accordingly, the Seminole Line is not

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breaking large replacement projects into smaller pieces so that they could qualify under the automatic or prior notice cost limits.").

<sup>26</sup> See *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231 (2006). See also 18 C.F.R. § 157.202(b)(7), which defines a "project" as "a unit of improvement or construction that is *used and useful upon completion*." (emphasis added).

<sup>27</sup> Moreover, KMIGT states in its July 20, 2010 prior notice request that the combined cost of all projects to serve Aventine (the separate acquisition of the delivery lateral and the instant proposal) fall below prior notice cost limits.

<sup>28</sup> The Commission affords pipelines reasonable deference in conducting operations and provides pipelines with reasonable discretion in managing their own systems. See *Gulf South Pipeline Co., LP*, 132 FERC ¶ 61,199 at P 64 (2010).

environmentally superior, and is not a reasonable alternative that should have been considered in the environmental assessment.<sup>29</sup>

26. Because we conclude that KMIGT's purchase of the SourceGas delivery lateral is an independent action that is not before the Commission in this proceeding, and is therefore irrelevant, a hearing regarding the delivery lateral's cost-effectiveness is not warranted.<sup>30</sup>

27. Finally, we reject Seminole's claim that KMIGT is barred from using the delivery lateral acquired from SourceGas as part of its jurisdictional system. Contrary to Seminole's assertion, the function of the delivery lateral has changed. Direct delivery by an interstate pipeline (KMIGT) to an end user is not the same function as the retail/delivery functions of an LDC (SourceGas). KMIGT is extending its jurisdictional transportation system to provide service to Aventine, and it does not matter if KMIGT constructed a new delivery lateral, or, as is the case here, acquired a previously non-jurisdictional delivery lateral. KMIGT will integrate the delivery lateral into its interstate transportation system, and this type of service unquestionably remains subject to Commission jurisdiction under the NGA.

28. For the reasons stated above, we will deny Seminole's protest.

#### **Request to Waive 30-Day Reconciliation Period**

29. KMIGT requests that the Commission waive the 30-day reconciliation period set forth in section 157.205(f) of the regulations, and grant authorization to proceed with construction by no later than October 15, 2010.<sup>31</sup> KMIGT states that this date is critical because the freeze-thaw cycle that occurs in the project area from November to March "significantly exacerbates" the strain on the wrinkle bends at issue. KMIGT asserts that

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<sup>29</sup> See Council on Environmental Quality regulations implementing the National Environmental Policy Act at 15 C.F.R. §1500.2(e) (2010) (agencies shall "identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions...").

<sup>30</sup> As KMIGT correctly notes, an evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record." *Northern Natural Gas Co.*, 131 FERC ¶ 61,209, at P 14 (2010).

<sup>31</sup> We note that in its July 20, 2010 application, KMIGT stated that it must start construction of the proposed facilities as soon as the 60-day notice period (September 24, 2010) expired, due to the onset of winter weather.

if it starts construction any later than October 15, the freeze-thaw cycle will jeopardize its ability to complete replacement of the wrinkle bends in High Density Areas by the end of 2010, per its commitment to PHSMA.

30. KMIGT adds that if the reconciliation period is not waived, it will have to replace the 16-inch pipe located in the High Density Areas with like-sized pipe (rather than 20-inch pipe) under the self-implementing authorization set forth in the Commission's regulations.<sup>32</sup> Under this scenario, KMIGT would then replace that new pipe in Spring 2011, when it returns to replace the entire 11.4-mile Franklin to Hastings Pipeline with 20-inch pipe required to service Aventine. KMIGT states this would result in more disruption to residents in the HDA, increase costs, and result in additional environmental impacts. KMIGT asserts that it discussed the matters at issue with Seminole's counsel, and can see no basis for resolving the dispute.<sup>33</sup>

31. Seminole opposes KMIGT's request to waive the 30-day reconciliation period. Seminole states that, contrary to KMIGT's assertion, further discussions between the two parties would not be fruitless, as Seminole is attempting to enter into negotiations with KMIGT for the purchase of the Seminole Line.<sup>34</sup>

32. It is clear from the record that expeditious processing of KMIGT's filing is critical. KMIGT has worked closely with PHMSA to develop a plan for proceeding with the needed replacement, including a commitment to repair wrinkle bends in pipe located in the High Density Areas by the end of this year. KMIGT submits that, because of the freeze-thaw cycle, it likely will not meet this end-of-the-year commitment unless it can start replacement operations no later than October 15, 2010.

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<sup>32</sup> See 18 C.F.R. § 2.55(b), allowing facilities that have or will soon become physically deteriorated to be replaced, with no advance notification, if the replacement will not result in a reduction or abandonment of service, will have a "substantially equivalent design delivery capacity," and will be located in the same right-of-way and use the same temporary work space as the facilities being replaced.

<sup>33</sup> KMIGT October 7, 2010 Answer at 11-13.

<sup>34</sup> Seminole October 5, 2010 Answer at 13. Seminole also alleges that KMIGT failed to properly maintain its pipeline, and only now raises imminent safety considerations to "pressure" the Commission into taking "precipitous action." Seminole cites no supporting evidence for such claims. In any event, Seminole's allegation is immaterial. Moreover, we can assure Seminole that the Commission considers the merits of each case that comes before us, based on the individual facts presented.

33. The purpose of the prior notice procedures is to allow interested parties to air legitimate concerns and afford all parties the opportunity to resolve their differences. It is not intended as a vehicle to delay the resolution of matters that have been fully aired, or that lack substantive basis and thus are without merit on their face.<sup>35</sup> Under the circumstances here, no valid purpose would be served by our waiting until October 25, 2010 to act on the merits of KMIGT's application. KMIGT apparently has no interest in acquiring the Seminole Line. We agree that the nature of Seminole's protest leaves no room for resolution, there is nothing more for the parties to resolve, and Seminole is unlikely to withdraw its protest.

34. Accordingly, we find good cause to waive the 30-day reconciliation period, and will proceed to the merits of KMIGT's application. We will treat the filing as an application under section 7(c) as if the 30-day period had already lapsed in order to minimize the delay and burden caused by the protest and to prevent unnecessary delay of KMIGT's proposed construction activities.

### **III. Discussion**

35. To determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our Certificate Policy Statement addressing new facilities.<sup>36</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. In deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercises of eminent domain.

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<sup>35</sup> See, e.g., *CenterPoint Energy Gas Transmission Co.*, 121 FERC ¶ 61,180 (2007); *Texas Eastern Transmission*, 90 FERC ¶ 61,278 (2000); *Kern River Gas Transmission Co.*, 59 FERC ¶ 61,084 (1992); *Panhandle Eastern Pipeline Co.*, 46 FERC ¶ 61,076 (1989), *reh'g denied*, 48 FERC ¶ 61,283 (1989); *Transcontinental Gas Pipeline Corp.*, 48 FERC ¶ 61,254 (1989).

<sup>36</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

36. Under the Certificate Policy Statement, 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

37. Although detailed cost allocation and potential subsidization information is not normally required as part of a blanket certificate proceeding, KMIGT provided such information in its September 29, 2010 filing.

38. Seminole states that KMIGT provided no evidence that the negotiated rate Aventine has agreed to pay will be sufficient to cover the construction costs of the project and if KMIGT only intends to recoup the "expansion costs" from Aventine, as opposed to the entire \$23.5 million, the effect on existing customers should be clearly set forth. The portion of the project costs associated with replacing the wrinkle bends is being incurred to improve the service of the existing customers. Thus, inclusion of such costs in the rates of existing shippers does not constitute a subsidy under the Certificates Policy Statement. With respect to the remaining costs, KMIGT's filing illustrates that revenues for the project under the pipeline's maximum tariff rate<sup>37</sup> will exceed the cumulative cost of service for the incremental costs of the expansion (i.e., the incremental costs associated with replacing the entire Franklin to Hastings Pipeline with 20-inch pipe over those that

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<sup>37</sup> When determining whether a presumption of rolled-in rate treatment is warranted it is appropriate to use the maximum recourse rate in comparing project costs and revenues. When the pipeline files in the future under section 4 of the NGA to recover the costs associated with the expansion project, the project costs will be compared to the revenues that would be generated if the pipeline were charging the maximum recourse rate for all expansion services under contract, regardless of whether the contracted rate is less than or greater than the recourse rate and the pipeline bears the risk for any revenue shortfall under the negotiated rate agreements. *See Trunkline Gas Co. LLC*, 119 FERC ¶ 61,078 (2007); *Natural Gas Pipeline Co. of America*, 111 FERC ¶ 62,236, at 64,518 (2005); *Southern Natural Gas Co.*, 113 FERC ¶ 61,199, at n.20 (2005).

would be incurred for replacing only the 16-inch pipe with like-sized pipe) by \$985,281 over the life of the contract. Therefore, there will be no subsidization for the costs of the expansion by KMIGT's existing shippers.

39. Seminole states that even if Aventine's commitment were sufficient to cover the entire construction costs, Aventine's creditworthiness is questionable due to its previous bankruptcy. Seminole questions how KMIGT will recoup the costs associated with the expansion if Aventine should declare bankruptcy prior to the expiration of its contract.

40. The Commission's Creditworthiness Policy Statement encourages pipelines to address collateral issues with prospective shippers before construction and permits pipelines to develop larger collateral requirements for construction projects. KMIGT states in its answer that for this project it required Aventine to supply 36-months of credit. The Commission notes that any attempt by KMIGT to recover any costs associated with the expansion if Aventine should declare bankruptcy prior to the expiration of the contract would be resolved in a section 4 rate case, based on the appropriate facts.

41. As already noted, because we treated this proceeding as if Seminole's protest was not withdrawn, we considered KMIGT's prior notice request as an application for case-specific NGA section 7(c) authorization to construct new facilities. Nevertheless, when the Commission ultimately finds, as here, that a protest should be denied and the new facilities satisfy the requirements of the Certificate Policy Statement, it is Commission policy to authorize the construction and operation of the delivery facilities under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific certificate authority.<sup>38</sup> Therefore, we will authorize KMIGT to replace and construct the proposed facilities under its Part 157 blanket certificate, as it is proposed.

42. KMIGT will construct its Franklin to Hastings Expansion Project under its Part 157 blanket certificate. As noted earlier, staff prepared an EA in which it reviewed the environmental materials filed by KMIGT. The EA, which was placed in the record on September 21, 2010, confirms that the project is consistent with the requirements of section 157.206(b) of the regulations. The U.S. Fish and Wildlife Service concurred that the project would not adversely affect any federally listed species. The Nebraska State Historic Preservation Office stated that the project would have no effect on historic properties. Based on the EA, staff has determined, and we agree, that the project as

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<sup>38</sup> *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,258 (2008); *Destin Pipeline Co.*, 83 FERC ¶ 61,308 (1998).

approved does not constitute a major federal action significantly affecting the quality of the human environment.

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

The Commission orders:

(A) KMIGT is authorized to replace and construct the facilities as proposed in its July 20, 2010 prior notice request under its Part 157, Subpart F blanket certificate, subject to the applicable terms of and conditions in Part 284, Subpart G of the regulations.

(B) Seminole's September 24, 2010 protest is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.