

189 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang.

Bison Pipeline, LLC	Docket Nos.	CP23-543-000
Northern Border Pipeline Company		CP23-544-000
Wyoming Interstate Company, L.L.C. Fort Union Gas Gathering, L.L.C.		CP23-545-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENTS OF
CAPACITY

(Issued October 17, 2024)

1. On September 15, 2023, Bison Pipeline LLC (Bison), in Docket No. CP23-543-000, filed an application under section 7(b) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to abandon existing unsubscribed capacity supporting 300,000 dekatherms per day (Dth/day) of firm transportation service by lease to Wyoming Interstate Company, L.L.C. (WIC) pursuant to the terms of a capacity lease agreement between Bison and WIC.
2. Also on September 15, 2023, Northern Border Pipeline Company (Northern Border), in Docket No. CP23-544-000, filed an application, under sections 7(b) and 7(c)³ of the NGA and Part 157 of the Commission's regulations requesting authorization for its Bison XPress Project, located in McKenzie, Dunn, and Morton Counties, North Dakota. The proposed Bison XPress Project consists of the replacement and expansion of compression facilities at Northern Border's existing Arnegard, Manning, and Glen Ullin Compressor Stations. The additional compression will create incremental capacity supporting 300,000 Dth/day of firm transportation service. After the facilities are built

¹ 15 U.S.C. § 717f(b).

² 18 C.F.R. pt. 157 (2024).

³ 15 U.S.C. § 717f(c).

Northern Border requests authorization to abandon this expansion capacity by lease to WIC.

3. On September 18, 2023, WIC and Fort Union Gas Gathering, L.L.C. (Fort Union), in Docket No. CP23-545-000, filed a joint application under section 7(c) of the NGA and Part 157 of the Commission's regulations requesting authorization for the Bakken xPress Project, which is designed to create to a new outlet for natural gas from the Bakken production basin. Specifically, Fort Union requests a limited jurisdiction certificate to enable WIC to use capacity on Fort Union's system, under a capacity lease, to provide firm transportation service in interstate commerce. Fort Union also asks for a determination that leasing capacity to WIC will not affect the otherwise non-Commission jurisdictional status of its gathering system. WIC requests authorization to lease capacity to provide 300,000 Dth/day of firm transportation service on the Northern Border, Bison, and Fort Union pipeline systems.

4. Because the proposals are interdependent, we address the three unconsolidated applications in one order. Collectively, the proposals intend to facilitate the transportation by WIC of 300,000 Dth/day of natural gas from receipt points in North Dakota to a delivery point in Colorado (at the Fort Union/WIC Interconnect).

5. As discussed below, we grant the requested authorizations, as described herein, subject to the conditions discussed in this order.

I. Background

6. Bison, a Delaware limited liability company,⁴ is a natural-gas company as defined by section 2(6) of the NGA⁵ engaged in the business of transporting natural gas in interstate commerce subject to the jurisdiction of the Commission. Bison owns and operates a 302-mile-long pipeline that transports natural gas from the Dead Horse region near Gillette, in Campbell County, Wyoming, to an interconnection with Northern Border's system at the Kurtz Meter Station in Morton County, North Dakota.⁶ Northern Border, a Texas general partnership,⁷ is a natural gas company as defined by section 2(6)

⁴ Bison is a wholly owned, indirect subsidiary of TC Energy Corporation.

⁵ 15 U.S.C. § 717a(6).

⁶ *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010); *see also Bison Pipeline LLC*, 149 FERC ¶ 61,243 (2014) (vacating in part and amending 2010 certificate).

⁷ Northern Border's operator is TransCanada Northern Border Inc., a Delaware corporation and indirect subsidiary of TC Energy Corporation. TC Energy Corporation

of the NGA and is engaged in the business of transporting natural gas in interstate commerce, subject to the jurisdiction of the Commission.⁸ Northern Border owns and operates a 1,412-mile-long pipeline system that transports gas from the Canadian border through Montana, North Dakota, South Dakota, Minnesota, Iowa, and Illinois into the Chicago area.

7. WIC, a Delaware limited liability company,⁹ is a natural gas company as defined by section 2(6) of the NGA and is engaged in the business of transporting natural gas in interstate commerce, subject to the jurisdiction of the Commission.¹⁰ WIC's approximately 850-mile-long transmission system is located in the states of Wyoming, Utah, and Colorado. WIC's mainline system extends from connections with several interstate pipelines in western Wyoming to a terminus at the Cheyenne Hub. At the Cheyenne Hub, WIC connects with several interstate and intrastate pipelines.¹¹

8. Fort Union is a Delaware limited liability company¹² with its principal place of business in Tulsa, Oklahoma. Fort Union gathers and treats natural gas produced from coal bed methane wells in the Powder River Basin of Wyoming.¹³ As relevant here, Fort Union owns and operates a pipeline system that consists, *inter alia*, of three parallel

owns 50% of the Northern Border pipeline, and the remaining 50% is owned by ONEOK Northern Border Pipeline Company Holdings, LLC.

⁸ Northern Border Application at 3.

⁹ WIC is owned by Kinder Morgan Energy Partners, L.P.

¹⁰ WIC and Fort Union Application at 5.

¹¹ At the Cheyenne Hub, WIC interconnects with the Rockies Express Pipeline, Colorado Interstate Gas, Tallgrass Interstate Gas Transmission, Trailblazer Pipeline Company, Southern Star Central Gas Pipeline, and Cheyenne Plains Gas Pipeline Company. *Id.*

¹² Copano Pipelines-Rocky Mountains, LLC owns a 50% membership interest in Fort Union. The remaining interest is owned by unaffiliated parties. Copano Pipelines-Rocky Mountains, LLC is an indirect wholly owned subsidiary of Kinder Morgan, Inc. *Id.* at 6.

¹³ Fort Union's gathering operations are not subject to the Commission's jurisdiction.

24-inch pipelines that run 106 miles starting in Campbell County, Wyoming, and ending in Converse County, Wyoming, where natural gas is delivered to WIC.¹⁴

II. Proposals

A. WIC's Proposed Bakken xPress Project in Docket No. CP23-545-000

9. According to WIC, the purpose of the Bakken xPress Project is to create a new outlet for gas from the Bakken production area using existing interstate pipeline interconnects. WIC states that it held a binding open season between June 1, 2023, and June 30, 2023, for up to 430,000 Dth/day of firm transportation service. As a result of the open season, WIC executed binding precedent agreements with Hess Trading Corporation (Hess) and ONEOK Rockies Midstream, LLC (ONEOK), for 100,000 Dth/day and 200,000 Dth/day of firm transportation service, respectively. No other bids were received.

10. Subsequently, WIC executed separate capacity leases with Northern Border (Northern Border Lease), Bison (Bison Lease), and Fort Union (Fort Union Lease) in order to provide transportation service on this new path (collectively, the Capacity Leases). Each of the Capacity Leases provides for capacity supporting 300,000 Dth/day of firm transportation service.¹⁵

11. WIC requests a certificate authorizing it to lease capacity on the Northern Border, Bison, and Fort Union systems to provide interstate natural gas transportation service for its shippers, Hess and ONEOK. WIC states that the Bakken xPress Project will allow project shippers to transport 300,000 Dth/day of natural gas on a firm basis from existing receipt points on Northern Border's system in McKenzie and Williams Counties, North Dakota, to the Fort Union/WIC Interconnect, which is located on WIC's Medicine Bow Lateral in Converse County, Wyoming (the Bakken xPress Leased Capacity).¹⁶ The only proposed receipt points are on the Northern Border system in North Dakota, as identified in the lease with Northern Border, and the only proposed delivery point is at the WIC interconnect with Fort Union. WIC states that the project shippers will have the option to separately contract for transportation from the Fort Union/WIC interconnect to

¹⁴ WIC and Fort Union Application at 6.

¹⁵ *Id.* at 3.

¹⁶ Specifically, the project would use capacity on: Northern Border's system between the receipt points and the existing interconnect with Bison in Morton County North Dakota; Bison's pipeline between the Northern Border interconnect and the existing Fort Union interconnect in Campbell County, Wyoming; and Fort Union's system between the Bison interconnect and the existing interconnect with WIC.

downstream delivery points on WIC's system at the Cheyenne Hub in Weld County, Colorado.¹⁷

12. The application states that WIC will provide firm transportation service pursuant to the terms and conditions of its gas tariff filed with the Commission. WIC is proposing to recover the cost of the Bakken xPress Leased Capacity by charging an incremental rate to shippers who use the capacity. The incremental rate is based on WIC's lease payments under the Capacity Leases. WIC also proposes to implement a related fuel and lost and unaccounted for charge associated with use of the Bakken xPress Leased Capacity.

13. WIC requests case-specific certificate authority to enter into the Capacity Leases and to use the Bakken xPress Leased Capacity as an integrated part of its system.

B. Northern Border's Proposed Bison XPress Project in Docket No. CP23-544-000

14. Northern Border states that when its pipeline system was initially placed into service in 1982, all of the gas supply it transported originated in the Western Canadian Sedimentary Basin. However, over time the receipt of Bakken production has steadily grown and currently most receipts enter the system downstream of Northern Border's Port of Morgan receipt point at the Canadian border and upstream of the Glen Ullin compressor station in North Dakota.¹⁸

15. Northern Border states that favorable transportation differentials between the Bakken and Western Canadian Sedimentary Basin have resulted in high utilization of its system. It points out, for example, that Bakken receipts have increased on its system by over 350% since 2014.¹⁹ It explains that the combination of high utilization and the age of certain critical compressor units in North Dakota increases the risk of outages at these stations. Northern Border also states that its reliance on a single-unit compressor station design increases its reliability risk, including potential outage, particularly during the winter season when shipper demand is highest. Northern Border avers that replacing and expanding three existing compressor stations and introducing standby horsepower on its system will improve system reliability as well as provide additional incremental capacity.

16. Northern Border requests a certificate and abandonment authority from the Commission for the Bison XPress Project, which would consist of the replacement and

¹⁷ WIC and Fort Union Application at 2.

¹⁸ Northern Border Application at 5.

¹⁹ *Id.*

expansion of compression facilities at three of Northern Border's existing compressor stations.

17. At the Arnegard (No. 4) Compressor Station in McKenzie County, North Dakota, Northern Border proposes to increase the total certificated horsepower (HP) from 20,000 HP to 42,964 HP.²⁰ Modifications will include (1) abandoning by removal the existing 20,000-HP Avon gas-fired, turbine compressor, (2) installing two new 23,470-HP Solar Turbine Titan 130 gas-fired, turbine compressors, and (3) installing related facilities, including associated piping, gas cooling bays, and appurtenances.

18. At the Manning (No. 5) Compressor Station in Dunn County, North Dakota, Northern Border proposes to increase the total certificated HP from 38,000 HP to 59,978 HP.²¹ Modifications will include (1) placing the existing 38,000-HP RB211 gas-fired, turbine compressor on standby, (2) installing two new 31,900-HP Solar Turbine Titan 250 gas-fired, turbine compressors, and (3) installing related facilities, including associated piping and appurtenances.

19. And at the Glen Ullin (No. 6) Compressor Station in Morton County, North Dakota, Northern Border proposes to increase the total certificated HP from 38,000 HP to 60,684 HP.²² The modifications will include (1) placing the existing 38,000-HP RB211 gas-fired, turbine compressor on standby, (2) installing two new 31,900-HP Solar Turbine Titan 250 gas-fired, turbine compressors, and (3) installing related facilities, including associated piping, gas cooling bays, and appurtenances.

²⁰ Northern Border states that the total station HP with the new units will be site-rated by electronic controls to not exceed the proposed certificated HP of 42,964. The remaining HP (3,976 HP) will serve as standby horsepower to maintain service in the event a horsepower outage occurs elsewhere on Northern Border's system. Northern Border Application at 9, 11, & n.11.

²¹ Northern Border states that the total station HP with the new units will be site-rated by electronic controls to not exceed the proposed certificated HP of 59,978. The remaining HP (41,822 HP) will serve as standby HP to maintain service in the event a horsepower outage occurs on Northern Border's system. *Id.* at 9, 12, & n.13.

²² Northern Border states that the total station HP with the new units will be site-rated by electronic controls to not exceed the proposed certificated HP of 60,684. The remaining HP (41,822 HP) will serve as standby HP to maintain service in the event a horsepower outage occurs on Northern Border's system. *Id.* at 9, 12, & n.14.

20. Northern Border states that all of the proposed facility modifications and additions will be located entirely on property owned by Northern Border, within existing Northern Border easements, or on leased space.

21. Northern Border states that its Bison XPress Project will: (1) replace and expand existing compressor facilities with new, more modern and efficient compression facilities, (2) create incremental mainline capacity supporting 300,000 Dth/day of firm transportation service from receipt points between Northern Border's Culbertson Compressor Station²³ and Glen Ullin Compressor Station to its interconnection with Bison's system in Morton County, North Dakota, which will be leased to WIC pursuant to the Northern Border Lease, and (3) introduce standby HP for the first time on Northern Border's system.²⁴

22. The total estimated cost of constructing the Bison XPress Project will be approximately \$555 million. Northern Border proposes to allocate the costs of the project between replacement costs, approximately \$347 million, and expansion costs, approximately \$208 million, and seeks a pre-determination that it may roll the replacement costs into its system rates in a future rate case.

C. Bison's Proposal in Docket No. CP23-543-000

23. Bison's pipeline has a certificated winter-day design capacity supporting 395,600 Dth/day of firm transportation service.²⁵ Since placing the pipeline into service, Bison states, contracted gas flow has declined significantly and it has not utilized its system for commercial deliverability since December of 2015, and currently does not

²³ The Culbertson Compressor Station in Roosevelt County, Montana is No. 3 on Northern Border's system, located just north of the No. 4 Arnegard Compressor Station. Northern Border does not propose to modify or construct facilities at the Culbertson Compressor Station.

²⁴ Northern Border Application at 9. Northern Border states that the standby HP will be maintained at Compressor Stations No. 4, 5, and 6 for use in the event of a planned or unplanned outage of certificated HP, and that the standby compression will enable Northern Border to maintain its certificated level of HP in the event of an outage, thereby mitigating the risk of service interruptions during such outages.

²⁵ *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (authorizing 477 MMcf/day of capacity); *Bison Pipeline LLC*, 149 FERC ¶ 61,243 (vacating Bison's certificate, in part, and amending the certificate to authorize 407 MMcf/day); Bison's Prior Notice Request in Docket No. CP23-85 at 4, n.7 (abandoning capacity such that the Bison Pipeline's certificated winter-day design capacity is 395,600 Dth/day).

have any active transportation service agreements.²⁶ Bison seeks authority to abandon existing unsubscribed capacity supporting 300,000 Dth/day of firm transportation service to WIC pursuant to the terms of the Bison Lease,²⁷ for use as part of WIC's Bakken xPress Project.

24. The transportation path covered by the Bison Lease extends from a receipt point in Morton County, North Dakota (Bison's interconnection with Northern Border's system at the Kurtz Meter Station) to a delivery point with Fort Union in Campbell County, Wyoming (Buffalo Meter Station). Bison proposes to make minor facility modifications pursuant to its blanket certificate issued in Docket No. CP09-161-000²⁸ and section 2.55 of the Commission's regulations to accommodate the southward flow of volumes transported via the Bison Lease.

25. Bison states that the ten-year primary term of the Bison Lease would commence on the date on which WIC places the Bakken xPress Project into service. The agreement provides that following the expiration of the primary term, WIC will have the right to extend the term of the Bison Lease with written notice.²⁹

26. Bison states that the lease payments made by WIC under the Bison Lease will be less than the firm transportation rates for comparable service on Bison's system and that Bison will maintain operational control over its system during the term of the lease.³⁰

D. Fort Union's Proposal in Docket No. CP23-545-000

27. Fort Union requests a limited jurisdiction certificate to operate the leased capacity on its system and to allow WIC to transport interstate gas pursuant to the Fort Union Lease, while at the same time leaving Fort Union's non-leased capacity and its gathering

²⁶ Bison Application at 3.

²⁷ *Id.* at 4. The Bison Lease is an operating lease in accordance with General Instruction No. 19 of Part 201 of the Commission's regulations. 18 C.F.R. pt. 201 (2024).

²⁸ *Bison Pipeline LLC*, 131 FERC ¶ 61,013.

²⁹ Bison Application at 4.

³⁰ WIC will pay Bison a monthly lease payment of \$4.563 per Dth, including any commodity charges and/or surcharges applicable to the Bison Lease, as if WIC were a shipper under Bison's Rate Schedule FT-1. *Id.* at 5.

operations exempt from NGA jurisdiction.³¹ Fort Union states that the lease will allow the utilization of capacity on its gathering system in Wyoming as part of the new interstate transportation path that the interdependent projects will create.³²

III. Procedural Matters

A. Notice, Interventions, Protests, and Comments

28. Notice of the applications filed in Docket Nos. CP23-543-000, CP23-544-000, and CP23-545-000 was published in the *Federal Register* on October 10, 2023, with comments, interventions, and protests due on October 23, 2023.³³ Twelve entities filed timely, unopposed motions to intervene in the proceedings.³⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.³⁵

29. As discussed further below, the Commission received numerous comments from individuals and groups. Commenters in support of the projects assert that the projects will provide benefits such as increasing competition at the Cheyenne Hub (and thereby reducing prices), reducing greenhouse gases by reducing flaring, increasing tax revenues, creating jobs, and enhancing system safety and reliability on the Northern Border system. Three commenters—Canadian Association of Petroleum Producers (CAPP), Indicated

³¹ *Id.* at 4.

³² *Id.* To provide the capacity to be leased to WIC, Fort Union states it will install two 5,000 HP compressors along with approximately 800 feet of new discharge pipe and other auxiliary facilities in Campbell County, Wyoming.

³³ 88 Fed. Reg. 69,917 (Oct. 10, 2023).

³⁴ The timely, unopposed intervenors in all three proceedings are: Concord Energy LLC; BP Energy Company; ConocoPhillips Company; Shell Energy North America (US), L.P.; Public Service Company of Colorado, Northern States Power Company – Minnesota, Northern States Power Company – Wisconsin (jointly); Hess Trading Corporation; Canadian Association of Petroleum Producers; Twin Eagle Resource Management, LLC; and Tenaska Marketing Ventures. Northern Illinois Gas Company d/b/a Nicor Gas Company intervened only in Docket No. CP23-544-000.

³⁵ 18 C.F.R. § 385.214(c) (2024).

Shippers,³⁶ and Northern Border Shipper Group³⁷—raised concerns about rate treatment, costs, and the Capacity Leases. Northern Border Shipper Group filed a limited protest with respect to Northern Border’s proposal. The comments and protest are addressed in the Environmental Assessment (EA) prepared for the Bison XPress Project (CP23-544) and, as appropriate, below.

B. Answers

30. On November 6, 2023, Northern Border filed a Motion for Leave to Answer and Answer (Northern Border Answer) in response to the protest from Northern Border Shipper Group and comments in opposition from CAPP and Indicated Shippers.

31. On November 13, 2023, WIC filed a Motion for Leave to Answer and Answer (WIC Answer) in response to the comments in opposition from CAPP.

32. Although the Commission’s Rules of Practice and Procedure do not permit an answer to protests or answers to answers, we will accept the answers identified above because they provide information that will assist us in our decision-making process.³⁸ The answers will not cause undue delay or unfairly prejudice other parties.

IV. Discussion

33. The proposals to acquire capacity by lease and construct natural gas facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.³⁹ Additionally, the proposals to abandon facilities and capacity by lease are subject to the requirements of section 7(b) of the NGA.⁴⁰

³⁶ Indicated Shippers comprises BP Energy Company, ConocoPhillips Company, and Shell Energy North America (US), L.P.

³⁷ Northern Border Shipper Group comprises Tenaska Marketing Ventures and Twin Eagle Resource Management, LLC.

³⁸ 18 C.F.R. § 385.213(a)(2) (2024).

³⁹ 15 U.S.C. § 717f(c), (e).

⁴⁰ *Id.* § 717f(b).

A. Certificate Policy Statement (WIC's Bakken xPress Project and Northern Border's Bison XPress Project)

34. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁴¹ 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. It explains that, in deciding whether and under what terms 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 appropriately consider 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 project construction.

35. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities. 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 benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis, where other interests are considered.

⁴¹ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). On March 24, 2022, the Commission issued an order converting the policy statements issued in February 2022 to draft policy statements. See *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022) (Order on Draft Policy Statements). The Commission stated that it will not apply the draft policy statements to pending applications or applications filed before the Commission issues any final guidance, *id.* P 2, and the Commission is not required to do so. See *Healthy Gulf v. FERC*, 107 F.4th 1033, 1040-41 (D.C. Cir. 2024) (upholding the Commission's decision not to apply the draft policy statements); *Ala. Mun. Distrib. Grp. v. FERC*, 100 F.4th 207, 214-15 (D.C. Cir. 2024) (same).

1. WIC's Bakken xPress Project

36. As part of its Bakken xPress Project, WIC requests authorization to lease capacity on the Northern Border, Bison, and Fort Union systems to provide 300,000 Dth/day of incremental firm natural gas transportation service for project shippers. In considering WIC's proposal, we look to the Certificate Policy Statement's guidance for evaluating proposals to certificate new construction because an acquisition of lease capacity is a substitute for new construction. In considering the public interest of a proposal by an interstate pipeline to lease capacity on facilities that have already been constructed and certificated, generally, as is the case here, there is no cause to consider issues related to disruptions of the environment, landowner rights, and the exercise of eminent domain.⁴² We do consider whether the pipeline seeking to lease capacity is prepared to financially support its proposal without relying on subsidization from its existing customers. We also consider whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on its own existing customers, and on existing pipelines in the market and their captive customers. Thus, the Commission has found it appropriate to apply the Certificate Policy Statement's criteria to the extent applicable when addressing requests by pipelines for certificate authority to lease capacity owned by other pipelines.⁴³

37. As stated, 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. Here, WIC's proposal is designed to provide a new outlet for natural gas from the Bakken production area to meet the needs of its shippers, Hess and ONEOK. WIC states the lease costs and fuel associated with the Bakken xPress leased capacity are not included in WIC's existing rates and will be fully recovered from Hess and ONEOK.⁴⁴ Accordingly, we find that there will be no subsidization of the project by existing customers.

⁴² *Trunkline Gas Co.*, 132 FERC ¶ 61,069, at P 8 (2010). We note that we do consider disruptions of the environment, landowner rights, and the exercise of eminent domain with respect to Northern Border's construction of new facilities as part of its Bison XPress Project.

⁴³ See, e.g., *id.*; *Gulf S. Pipeline Co.*, 178 FERC ¶ 62,051, at P 8 (2022); *UGI Storage Co.*, 157 FERC ¶ 61,078, at P 9 (2016); *CenterPoint Energy Gas Transmission Co.*, 126 FERC ¶ 61,239, at PP 12-13 (2009).

⁴⁴ WIC and Fort Union Application at 8 and 15. Additionally, WIC states that "[t]he Lessors will retain, in-kind, a percentage of natural gas for [fuel, lost and unaccounted charge], which percentage will be updated per the Lessor's notification requirement as defined in the Capacity Leases." *Id.* at n.11.

38. We also find that there will be no adverse impact on existing customers or other existing pipelines and their captive customers. The proposal will not impact WIC's existing customers as the lease costs and fuel will not be included in WIC's existing rates, and the proposal is designed to allow WIC to serve additional markets without degradation of service to WIC's existing customers. WIC's proposal in and of itself will not adversely affect other existing pipelines, including Bison and Northern Border, or their captive customers. Bison has no existing customers, and as discussed further below,⁴⁵ Northern Border is proposing upgrades to its system (i.e., the Bison XPress Project) to provide capacity to support 300,000 Dth/day of incremental firm natural gas transportation service that will be leased to WIC without degrading the service of Northern Border's existing customers. No pipelines or their captive customers have objected to WIC's proposal.

39. As noted above, WIC held an open season from June 1, 2023, through June 30, 2023, offering to provide up to 430,000 Dth/day of transportation service across the systems of Northern Border, Bison, and Fort Union, as well as its own Medicine Bow Lateral, as part of its Bakken xPress Project.⁴⁶ As a result of the open season, WIC executed binding 10-year precedent agreements with Hess and ONEOK for 100,000 Dth/day and 200,000 Dth/day, respectively, of firm transportation service.⁴⁷

40. CAPP filed comments requesting that that Commission investigate, among other things, how the award of capacity by WIC to ONEOK comports with the Commission's policies, given the affiliate relationship between Northern Border and ONEOK.⁴⁸

41. In its answer, WIC clarifies that Northern Border did not award capacity to ONEOK, but rather, Northern Border leased capacity to WIC, which is not affiliated with Northern Border or ONEOK. WIC states that CAPP points to no possible violation of WIC's tariff or Commission policy in connection with WIC's award of capacity to ONEOK through a transparent open season that made the capacity available to all interested market participants. Agreements between affiliates can occasionally raise concerns regarding self-dealing, but these concerns are not implicated here, where there

⁴⁵ See *infra* P 74.

⁴⁶ WIC and Fort Union Application at 2-3.

⁴⁷ The only bids received in response to the open season were from Hess and ONEOK.

⁴⁸ CAPP Comments at 6.

is not an agreement between affiliates.⁴⁹ We find the award of capacity by WIC to ONEOK to be consistent with Commission policy.

42. WIC has entered into long-term precedent agreements with shippers for 100% of the project's capacity. Precedent agreements, particularly when they are for 100% of the project's capacity, are significant evidence of the need for the proposed project.⁵⁰ Accordingly, we find that WIC has demonstrated a need for the Bakken xPress Project and further that the project will not have adverse impacts on existing shippers or other pipelines and their existing customers, and that the project will not have economic impacts on landowners and surrounding communities. Therefore, we conclude that the Bakken xPress Project is consistent with the criteria set forth in the Certificate Policy Statement.

2. Northern Border's Bison XPress Project

43. As stated above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on

⁴⁹ A core reason for looking behind an affiliate precedent agreement is to assure the proposed project will not impose excessive costs on the affiliate and its captive ratepayers. *See Gas Transmission Nw., LLC*, 185 FERC ¶ 61,035, at n.50 (2023); *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232, at P 37, at n.104 (2022) (citing *Env'tl. Def. Fund v. FERC*, 2 F.4th 953, 973 (D.C. Cir 2021) & *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009)). That concern is not implicated where, as here, there is no affiliation between the project proponent pipeline company and a shipper.

⁵⁰ *See, e.g., Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 114 (D.C. Cir. 2022) ("Precedent agreements are important, and sometimes sufficient, evidence of market need for a pipeline project."); *Tex. Gas Transmission, LLC*, 181 FERC ¶ 61,049 (2022) (finding a long-term precedent agreement for almost 100% of the project's capacity is significant evidence of need for the proposed project); *Enable Gas Transmission, LLC*, 175 FERC ¶ 61,183, at P 30 (2021) (finding a long-term precedent agreement for approximately 67% of the project's capacity demonstrated a need for the proposed project); *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 35 (2020) (finding a 10-year, firm precedent agreement for approximately 74% of the project's capacity adequately demonstrated that the project was needed). *See also Sierra Club v. FERC*, 38 F.4th 220, 230 (D.C. Cir. 2022) (finding a long-term precedent agreement for 80% of the project's capacity showed an actual need for the project); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *1 (D.C. Cir. Feb. 19, 2019) (unpublished) (finding the Commission's conclusion that there is a market need for the project was reasonable and supported by substantial evidence, in the form of long-term precedent agreements for 100% of the project's capacity).

subsidization from its existing customers. Northern Border's Bison XPress Project is designed to enable Northern Border to lease capacity sufficient to support 300,000 Dth/day of incremental firm natural gas transportation service to WIC while at the same time improving Northern Border's system reliability. Northern Border does not have existing unsubscribed capacity on its system sufficient to meet the needs of WIC and its shippers. Therefore, Northern Border is proposing to replace existing compressor units which it asserts are or will soon become physically deteriorated or obsolete⁵¹ at three of its existing compressor stations with sufficient additional compression to accommodate 300,000 Dth/day of incremental firm transportation service firm between receipt points in North Dakota and the interconnect with Bison. Northern Border states its proposal will also result in standby horsepower being available at each of the affected compressor stations, as detailed above.⁵² Northern Border has entered into a binding 10-year precedent agreement with WIC for the full expansion capacity to be created by the Bison XPress Project. As discussed above, we find that the service to be provided by WIC is needed and that the capacity to be constructed by Northern Border and leased to WIC is necessary to enable WIC to transport natural gas for Hess and ONEOK.

44. Indicated Shippers and Northern Border Shipper Group argue that Northern Border may not have appropriately segregated the costs of the replacement and expansion facilities, and thus, the expansion facilities could be subsidized by existing shippers. As discussed below,⁵³ we find that Northern Border's allocation of the costs of the project between the replacement and expansion components to be appropriate. In addition, the Commission's requirement that all lease costs be kept separate from system costs will ensure that shippers on the lessor pipeline are insulated from any economic effects of the lease. For these reasons, we find that the Certificate Policy Statement's threshold requirement of no subsidization is satisfied.

45. Northern Border has entered into a long-term capacity lease with WIC for 100% of the project's incremental capacity. A contract for the project's expansion capacity, particularly one for 100% of the capacity, is significant evidence of the need for the proposed project.⁵⁴ We also find that there will be no adverse impact on existing customers or other existing pipelines and their captive customers. The Bison XPress

⁵¹ Northern Border Application at 2. Northern Border states that at the anticipated time of replacement in 2026, the units will be between 28 and 44 years of age, which was confirmed in Northern Border's July 15, 2024 Data Response that provided the year each unit was placed in service.

⁵² *Id.* at 1.

⁵³ *See infra* PP 89-90.

⁵⁴ *See supra* P 42 & notes 49-50.

Project is designed to enable Northern Border to provide capacity to support 300,000 Dth/day of incremental firm natural gas transportation service that will be leased to WIC without degrading the service of Northern Border's existing customers. Additionally, replacing the older units and adding standby capacity will improve system reliability. There is no evidence that the project will displace service on any other systems.

46. We further find that Northern Border has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities. Most of the Bison XPress Project facilities will be located within the fence lines of Northern Border's existing compressor stations. The total acreage to be disturbed for construction of the project facilities is 102.7 acres, including 26.86 acres at the Arnegard Compressor Station, 33.15 acres at the Manning Compressor Station, and 42.69 acres at the Glen Ullin Compressor Station. Permanent impacts (a total of 6.46 acres) would occur only at the Manning Compressor Station and would be associated with the expansion of the existing facility fence line and grading to level the land surface.⁵⁵ Temporary workspace at all three compressor stations that extends beyond Northern Border's property would be leased from the respective landowners during project construction. Following the completion of construction, temporary workspace outside of the existing facilities would be restored to pre-construction contours, to the extent practicable, and revegetated.⁵⁶ Therefore, we are satisfied that Northern Border has taken appropriate steps to minimize adverse economic impacts on landowners and communities affected by the project.

47. Northern Border's proposed Bison XPress Project will enable it to provide capacity necessary to support 300,000 Dth/day of firm transportation service, all of which it will lease to WIC for use in its Bakken xPress Project. Northern Border has entered a capacity lease with WIC for 100% of the expansion capacity to be created by the Bison XPress Project. Accordingly, we find that Northern Border has demonstrated a need for the Bison XPress Project and further, that the project will not have adverse impacts on existing shippers or other pipelines and their existing customers, and that the project will have minimal economic impacts on landowners and surrounding communities. Therefore, we conclude that the Bison XPress Project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.⁵⁷

⁵⁵ April 8, 2024 Final EA at 6.

⁵⁶ *Id.*

⁵⁷ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project's benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

B. Abandonments (Northern Border's Abandonment of Facilities, and Northern Border's and Bison's Abandonment of Capacity by Lease)

48. Section 7(b) of the NGA provides that an interstate pipeline company may abandon jurisdictional facilities or services only if the Commission finds the abandonment is permitted by the present or future public convenience or necessity.⁵⁸ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary with the circumstances of the particular proposal.⁵⁹ Continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity allow the abandonment.⁶⁰ If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing gas transportation services, the Commission generally will find that the public convenience or necessity permits the abandonment.⁶¹

49. Here, Northern Border proposes to abandon and replace a compressor unit at the Arnegard Compressor Station with two new compressor units which are sufficient to maintain existing services and provide the proposed new capacity to be leased to WIC. Accordingly, as discussed above, we find Northern Border's proposed abandonment of the 20,000-HP Avon gas-fired, turbine compressor unit at the Arnegard Compressor Station is permitted by the public convenience or necessity.

50. Additionally, Bison proposes to abandon existing unsubscribed capacity sufficient to support 300,000 Dth/day of firm transportation service on its pipeline. Because the capacity is currently unsubscribed there will be no impact on existing services provided by Bison.

51. Northern Border proposes to expand the capacity of its system sufficient to support 300,000 Dth/day of firm transportation service by adding compression and then abandoning this incremental capacity to WIC. Because the capacity being abandoned will be specifically constructed to support the lease with WIC, the abandonment will not have any impacts on Northern Border's shippers. WIC will reimburse Northern Border for all of the costs associated with the incremental capacity to be created on Northern

⁵⁸ 15 U.S.C. § 717f(b).

⁵⁹ *El Paso Nat. Gas Co.*, 148 FERC ¶ 61,226, at P 11 (2014) (*El Paso*).

⁶⁰ *Nat'l Fuel Gas Supply Corp.*, 160 FERC ¶ 61,050, at P 17 (2017) (citing *El Paso*, 148 FERC ¶ 61,226 at P 12).

⁶¹ See, e.g., *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210, at P 11 (2024) (citing *Tex. E. Transmission, LP*, 176 FERC ¶ 61,206, at P 11 (2021) and *Trunkline Gas Co.*, 145 FERC ¶ 61,108, at P 65 (2013)).

Border's system through the payments under the Northern Border Lease, and, as discussed below, we will require Northern Border to maintain separate books and accounting.⁶² We also find, as discussed further below, that the cost allocation for the Bison XPress Project between expansion and existing shippers is appropriate.⁶³

52. We find that Northern Border's and Bison's proposed abandonments by lease are permitted by the public convenience or necessity. We remind the applicants that when the leases terminate, WIC is required to obtain authority to abandon the leased capacities and Bison and Northern Border are required to obtain certificate authorization to reacquire that capacity.⁶⁴

C. Limited Jurisdiction Certificate

53. Fort Union requests a limited jurisdiction certificate allowing it to lease capacity to WIC for use in the transportation of natural gas in interstate commerce under the NGA during the term of the lease. Fort Union also seeks a determination that participation in the lease arrangement will not affect the non-jurisdictional status of its non-leased facilities, services, and operations.

54. To enable Fort Union to carry out its responsibilities under the capacity lease, the Commission hereby issues a limited jurisdiction certificate to Fort Union. The Commission looks closely at proposals that would create dual jurisdiction facilities, i.e., facilities that would be subject to state and federal jurisdiction, to avoid duplicative and/or potentially inconsistent regulatory schemes over the same facilities. The Commission recognizes that federal regulation of Fort Union will be "limited" in that it will apply only to its transportation of natural gas in interstate commerce; however, Fort Union will be subject to exclusive federal regulation with regard to the leasing of the capacity supporting the 300,000 Dth/day of firm transportation service that WIC will provide on Fort Union's system and any issues that may arise thereunder.

55. The limited jurisdiction certificate will enable Fort Union to operate the leased capacity being used for NGA jurisdictional services subject to the terms of the lease and subject to WIC's tariff. The limited jurisdiction certificate will also require Fort Union to operate the leased capacity in a manner that ensures WIC's ability to provide services on an open-access, non-discriminatory basis. The Commission has approved similar leases

⁶² See *infra* P 91.

⁶³ See *infra* PP 89-90.

⁶⁴ See, e.g., *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at PP 63, 76 (2017); *Islander E. Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

in the past involving gathering systems,⁶⁵ and our finding that Fort Union is jurisdictional is limited to its role as the lessor and operator of the capacity to be used by WIC to provide WIC's interstate services. Fort Union will remain non-jurisdictional as to its gathering activities.⁶⁶

56. Finally, this order grants waivers of certain requirements that otherwise would be applicable to an NGA interstate pipeline. Specifically, waiver is granted of all reporting, filing, electronic posting, and other such requirements by Fort Union, including any requirement to file FERC Form No. 2 (and any quarterly financial filings) and assess annual charges. In similar circumstances to this one, the Commission has waived certain reporting and other regulatory requirements for limited-purpose pipelines.⁶⁷ Although Fort Union did not request these waivers, this order finds it appropriate to grant them in this proceeding.

D. Capacity Leases

1. Northern Border Capacity Lease

57. WIC and Northern Border have entered into a capacity lease agreement that provides that Northern Border will own, operate, and maintain the Bison XPress Project facilities and abandon incremental capacity supporting 300,000 Dth/day of firm transportation service associated with the facilities by lease to WIC for the Bakken xPress Project.⁶⁸ Northern Border states that WIC will pay Northern Border a fixed lease payment of \$9.125 per Dth. WIC will also pay Northern Border any commodity charges and/or surcharges applicable to the lease, including fuel and lost and unaccounted for gas, as if WIC were a shipper under Northern Border's Rate Schedule T-1.⁶⁹ The Northern

⁶⁵ See *Wyo. Interstate Co., L.L.C.*, 182 FERC ¶ 62,138 (2023); *High Point Gas Transmission, LLC*, 163 FERC ¶ 61,135, at PP 59-61 (2018).

⁶⁶ See *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089 (2008); *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100 (2008).

⁶⁷ *Sabine Pipe Line LLC*, 171 FERC ¶ 61,147 (2020); *High Point Gas Transmission, LLC*, 163 FERC ¶ 61,135 at PP 59-61; *Freeport McMoRan Energy, LLC*, 115 FERC ¶ 61,201, at PP 24-26 (2006); *Transcon. Gas Pipe Line Corp.*, 91 FERC ¶ 61,180 (2000); *B-R Pipeline Co.*, 89 FERC ¶ 61,312 (1999).

⁶⁸ Northern Border Application at 1-2 & 13.

⁶⁹ *Id.* at 14.

Border Lease will remain in effect for an initial term of 10 years with the ability to be extended for additional terms.⁷⁰

58. Northern Border states that the proposed monthly lease payment of \$9.125 per Dth is less than the monthly reservation rate of \$9.3519 per Dth for the entire path of the lease.⁷¹ Section 4.3 of the Northern Border Lease states that WIC will also provide fuel in-kind to Northern Border for fuel consumed under the lease, and that the fuel will be tracked and trued-up to ensure that WIC is responsible for the fuel use and lost and unaccounted for volumes associated with the leased capacity.

2. **Bison Capacity Lease**

59. Bison and WIC have entered into a capacity lease agreement that provides that WIC will lease existing unsubscribed capacity supporting 300,000 Dth/day of firm transportation service from Bison for the Bakken xPress Project (Bison Lease). Bison states that WIC will pay Bison a fixed lease payment of \$4.563 per Dth; any commodity charges and/or surcharges applicable to the lease, including fuel and lost and unaccounted for gas, will be paid as if WIC were a shipper under Bison's Rate Schedule FT-1. The Bison Lease provides for an initial term of 10 years with the ability to be extended for additional terms.⁷²

60. Bison states that the lease charge is less than Bison's monthly firm transportation rate for comparable service of \$25.258 per Dth.⁷³ Bison states that it will make minor facility modifications pursuant to its blanket certificate and section 2.55(b) of the Commission's regulations to accommodate the southward flow of volumes transported via the leased capacity.⁷⁴

61. Bison proposes to assess WIC a Company Use Gas rate that includes a separately stated fuel lost and unaccounted for gas component, as if WIC were a Rate Schedule FT-1 shipper. Pursuant to Section 5.1.5 of Rate Schedule FT-1 and Section 6.41 of the

⁷⁰ *Id.*

⁷¹ In its February 26, 2024, Data Request Response, Northern Border corrected the rates referenced in its application. Northern Border confirmed that the "entire path" refers to the path from the Stateline receipt point to the Kurtz delivery point.

⁷² Bison Application at 4-5.

⁷³ *Id.* at 6.

⁷⁴ *Id.* at 4, 7.

General Terms and Conditions of Bison's tariff,⁷⁵ Bison posts the applicable fuel rates on its website each month. Bison proposes to collect Company Use Gas and fuel lost and unaccounted for in-kind.

3. Fort Union Capacity Lease

62. Fort Union and WIC have entered into a capacity lease agreement that provides that WIC will lease capacity supporting 300,000 Dth/day of firm transportation service from Fort Union for the Bakken xPress Project (Fort Union Lease). To accommodate the lease, Fort Union will make certain modifications to its system, which include installation of two new 5,000-HP compressors, approximately 800 feet of new discharge pipe, and other auxiliary facilities.⁷⁶

63. The Fort Union Lease, which also provides for an initial 10-year term, requires payment on a monthly basis from WIC to Fort Union at a rate of \$6.0833 per Dth, including any fuel lost and unaccounted for, commodity charges, and surcharges.⁷⁷ In addition to the monthly lease payment, WIC has agreed to pay Fort Union one hundred percent of any additional revenues actually received from shippers for transportation services provided by WIC on the leased capacity under its Rate Schedule IT or as secondary firm service.⁷⁸

4. Discussion of Capacity Leases

64. As explained above, Northern Border, Bison, and Fort Union have entered into capacity leases with WIC under which Northern Border and Bison will abandon, and Fort Union will make available,⁷⁹ either newly created or existing unsubscribed firm capacity. In turn, WIC proposes to acquire that capacity from Northern Border, Bison, and Fort

⁷⁵ See Bison Pipeline LLC, Bison Tariffs, § 5.1.5 – (Rate Sch FT-1, Company Use Gas) (0.0.0); *id.* § 6.41 – (GT&C, Company Use Gas) (0.0.0).

⁷⁶ WIC and Fort Union Application at 4.

⁷⁷ *Id.* at 8. WIC and Fort Union note that Commission staff recently approved another WIC and Fort Union capacity lease in Docket No. CP22-508-000, which was part of a larger capacity lease arrangement that included Bighorn Gas Gathering, L.L.C. *Id.* at 3 (citing *Wyo. Interstate Co., L.L.C.*, 182 FERC ¶ 62,138).

⁷⁸ *Id.* at n.10.

⁷⁹ Because Fort Union is not currently a natural gas company as defined by section 2(6) of the NGA, it is not required to obtain abandonment authorization prior to leasing capacity on its system to WIC.

Union and use the leased capacity to provide service under the terms of its FERC Gas Tariff.

65. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission considers a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.⁸⁰ To enter into a lease agreement, the lessee generally needs to be a natural gas company as defined under the NGA and must obtain section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity, and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.⁸¹

66. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.⁸² As discussed below, the respective lease agreements between Northern Border and WIC, Bison and WIC, and Fort Union and WIC satisfy these requirements.

a. Lease Benefits

67. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.⁸³ In addition, leases can result in administrative efficiencies for shippers by not having to nominate across several pipelines.⁸⁴

⁸⁰ *Tex. E. Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

⁸¹ *Tex. Gas Transmission, LLC*, 113 FERC ¶ 61185, at P 10 (2005).

⁸² *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 57; *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,160, at 61,755-59 (1997); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at 61,888 (1995).

⁸³ See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander E. Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 70 (2002).

⁸⁴ *Wyo. Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

68. The proposed capacity leases will enable WIC to transport natural gas for Hess and ONEOK by relying in large part on Northern Border, Bison, and Fort Union's existing infrastructure, resulting in the construction of fewer, less costly facilities than WIC would need to construct on its own system to provide equivalent transportation service. The capacity leases will avoid the need to construct additional greenfield facilities that would duplicate the path from Bakken production areas served by Northern Border's system to the proposed interconnection between Fort Union and WIC.

69. WIC's lease with Northern Border provides benefits to shippers and the environment by avoiding the construction of approximately 155 miles of greenfield pipeline and duplicative facilities in North Dakota. Although Northern Border will need to construct some additional facilities in order to provide the leased capacity on its system, those facilities are far less extensive than what WIC would need to construct to extend its own system to provide the service independently.⁸⁵ WIC's lease with Bison eliminates the environmental impacts associated with construction of a duplicative greenfield pipeline in North Dakota and Wyoming. Moreover, the Bison Lease promotes the efficient use of existing pipeline facilities by utilizing existing unsubscribed capacity on Bison Pipeline. The lease with Fort Union also benefits the environment and reduces costs by using capacity on Fort Union's system and eliminating the need for WIC to construct greenfield facilities that would generally duplicate Fort Union's existing facilities. The capacity leases on Northern Border, Bison, and Fort Union will also provide administrative efficiencies by providing WIC's customers with seamless access to natural gas from the Bakken region under a single firm transportation contract across all systems.

b. Lease Payments

70. The Commission has typically approved leases in which the lease payments amount to no more than the rate charged by the lessor for a comparable transportation service.⁸⁶ Here, Northern Border explained that the monthly lease charge of \$9.125 per Dth is less than the illustrative monthly firm transportation rate of \$9.3519 per Dth for comparable service along the entire path on the Northern Border system. Additionally, the monthly lease payment to Bison of \$4.563 per Dth is less than the monthly firm transportation rate of \$25.258 per Dth for comparable service on the Bison pipeline

⁸⁵ Northern Border estimates that the cost to construct a greenfield pipeline that could provide the same service is approximately \$1.495 billion, which is over 700% higher than the expansion costs of the Bison XPress Project. Northern Border Application at 24.

⁸⁶ *ANR Pipeline Co.*, 179 FERC ¶ 61,040, at P 22 (2022).

system.⁸⁷ Therefore, WIC's lease payments are less than the rate charged by the lessors for a comparable transportation service for each capacity lease.

71. In some instances, the Commission has also considered whether the rates to be charged to the lessee's shippers are less than or equal to what the lessee's rates for comparable service would be if the lessee owned or constructed the capacity itself.⁸⁸ The capacity leases require WIC to pay on a monthly basis: (1) \$9.1250 per Dth to Northern Border, (2) \$4.5630 per Dth to Bison, and (3) \$6.0833 per Dth to Fort Union.⁸⁹ WIC asserts that constructing the greenfield pipeline facilities on its own system necessary to duplicate the lessors' transportation path would cost approximately \$1.5 billion for the path from the Bakken production areas to Northern Border's interconnect with Bison, \$1.9 billion for the Bison path, and \$376.6 million for the Fort Union path, yielding an approximate monthly rate of \$178.3898 per Dth for the same 300,000 Dth/day of capacity.⁹⁰ This is significantly higher than WIC's proposed incremental rates for the leased capacity. Therefore, the lease payments are consistent with the Commission's policy.

c. Effect on Existing Customers

72. The third criterion the Commission considers when approving a lease is whether a proposed lease arrangement will have an adverse effect on existing customers, such that the impact would outweigh the positive benefits already identified.⁹¹ As explained

⁸⁷ Fort Union is a natural gas gathering company and does not offer service comparable to the transportation service WIC will provide on the lease. The \$6.0833 per Dth rate paid to Fort Union is WIC's currently effective Maximum, Bakken Leased Capacity Incremental Rate; see Wyoming Interstate Company, L.L.C., WIC Tariff, Part II: Stmt. of Rates, Section 1.1 - Firm Rates (13.0.0).

⁸⁸ See, e.g., *Wyo. Interstate Co., L.L.C.*, 182 FERC ¶ 62,138 at P 17; *Transcon. Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092, at PP 50-53 (2016).

⁸⁹ WIC and Fort Union Application at 7-8.

⁹⁰ *Id.* at 12. WIC derived the applicable Bakken xPress Lease Capacity incremental maximum monthly reservation rate of \$19.7713 per Dth by dividing the total of its three monthly lease payments to Northern Border, Bison, and Fort Union, \$5,931,390, by the Lease Capacity, 300,000 Dth/day. *Id.* at 8, n.12, and Ex. P, at 1.

⁹¹ See, e.g., *Sabine Pipe Line, LLC*, 171 FERC ¶ 61,147 at P 19.

above, this order finds that the proposed lease arrangements do not adversely affect existing customers.⁹²

73. The lease with Northern Border will not adversely affect Northern Border's existing customers. The capacity leased to WIC on Northern Border's system will be the incremental capacity created by the Bison XPress Project facilities, and as discussed below, we find that Northern Border's customers will not subsidize the costs of the expansion.⁹³

74. The lease with Bison will not adversely affect existing customers on Bison's system because the lease utilizes currently unsubscribed capacity, leaving approximately 95,600 Dth/day of capacity available to Bison to provide open-access firm and/or interruptible transportation service to shippers who may be interested in service on Bison Pipeline in the future. Further, Bison states that it will not pass on any costs associated with the capacity lease to its existing customers because it has no existing customers.⁹⁴

75. Fort Union provides no jurisdictional transportation services and its existing customers of its gathering and processing operations will not see any degradation of their service due to the lease arrangement. Fort Union asserts that after the implementation of the capacity lease it will continue to perform natural gas gathering and processing operations as it does today and that it will not pass on any costs of the capacity lease to existing customers. None of its customers filed protests or adverse comments in this proceeding.

d. Capacity Lease Conclusion

76. We find that, for all applicants, the lease payments are satisfactory, there are significant benefits, and those benefits outweigh any potential harm to existing customers. Therefore, we find that the proposed leases are required by the public convenience and necessity. In addition, before service begins the parties are directed to file public versions of the lease agreements.

⁹² See *supra* P 38 (explaining that the proposal will not impact WIC's existing customers as the lease costs and fuel will not be included in WIC's existing rates, and the proposal is designed to allow WIC to serve additional markets without degradation of service to WIC's existing customers).

⁹³ See *infra* PP 89-90 (explaining that Northern Border appropriately allocated expansion and replacements costs such that existing shippers will not subsidize the expansion facilities).

⁹⁴ Bison Application at 6.

E. Rates**1. WIC's Bakken xPress Project****a. Incremental Rate**

77. WIC will provide Bakken xPress Project service pursuant to the terms and conditions of its FERC Gas Tariff. WIC proposes to recover the cost of the Bakken xPress Project Leased Capacity by charging an incremental rate, which is based on WIC's lease payments under the Capacity Leases, to shippers who use the capacity.⁹⁵ WIC notes that, although the Bakken xPress Leased Capacity is fully subscribed, it is possible that WIC will provide interruptible transportation service at times when the shippers are not using all reserved firm capacity.⁹⁶ WIC's proposed Firm Transportation, Maximum Monthly Reservation Rate is \$19.7713 per Dth,⁹⁷ and its proposed Interruptible Transportation Commodity rate is \$0.6500 per Dth.⁹⁸ WIC also proposes to implement a related fuel, lost, and unaccounted charge to all shippers using Bakken xPress Leased Capacity.⁹⁹ We have reviewed WIC's proposed incremental recourse rates for reservation, commodity, and fuel, lost, and unaccounted charges, and find they are consistent with Commission policy.¹⁰⁰

b. Negotiated Rate Agreements

78. WIC states that it will provide service to the project shippers under negotiated rate agreements. WIC also states that it anticipates that Commission approval and/or acceptance of the non-conforming and/or negotiated rate firm transportation service

⁹⁵ WIC and Fort Union Application at 3.

⁹⁶ *Id.* at 8-9 ("Section 284.9(a) of Commission's regulations, 18 C.F.R. § 284.9(a) (2023), requires that jurisdictional pipelines that offer firm transportation service must also offer interruptible transportation service.") and Ex. P at 76, n.8 and 77, n.13.

⁹⁷ *See supra* note 90.

⁹⁸ WIC and Fort Union Application, Ex. P at 1 (Leased Capacity Rate Derivation), 65 (Part II: Stmt. of Rates, Section 1.1 - Firm Rates) and 68 (Part II: Stmt. of Rates, Section 1.2 - Interruptible Rates).

⁹⁹ *Id.* at Ex. P at 72 (Part II: Stmt. of Rates, Section 2 - Fuel and L&U Rates) and 77 (Part II: Stmt. Of Rates, Section 3 – Footnotes).

¹⁰⁰ *Supra* PP 70-71.

agreements resulting from the open season will be required.¹⁰¹ WIC must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement¹⁰² and the Commission's negotiated rate policies.¹⁰³

c. Pro Forma Tariff Records

79. WIC proposes *pro forma* tariff records to implement the incremental rate and the related fuel lost and unaccounted for rate for the leased capacity, as well as other related tariff updates. We approve the *pro forma* tariff records included in Exhibit P and direct WIC to file corresponding actual tariff records before the in-service date of the leased capacity.

2. Northern Border's Bison XPress Project

80. Northern Border estimates that the cost of constructing the Bison XPress Project is approximately \$555 million, of which \$347 million is allocated to the replacement of the existing facilities and enhancement of existing service, and \$208 million is allocated to the expansion component of the project, based on a "like for like" equivalency allocation methodology.¹⁰⁴

a. Expansion Costs

81. Northern Border proposes to recover the \$208 million allocated to expansion costs through the lease payments received from WIC. Northern Border states that it proposes to lease all of the incremental project capacity to WIC, and therefore that capacity will be offered to the market pursuant to WIC's FERC Gas Tariff, as discussed further above.

¹⁰¹ WIC and Fort Union Application, Ex. I at 1 ("Requirements for the Project").

¹⁰² *Alternatives to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regulation of Negotiated Transp. Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194 (1996).

¹⁰³ *Nat. Gas Pipelines Negotiated Rate Policies & Practices; Modification of Negotiated Rate Pol'y*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

¹⁰⁴ Northern Border Application at 15 and Ex. K.

Accordingly, Northern Border is not proposing any rate for service or tariff modifications under Northern Border's FERC Gas Tariff related to the project.¹⁰⁵

b. Replacement Costs and Predetermination of Rolled-in Rate Treatment

82. Northern Border proposes to allocate \$347 million of project costs as supporting the replacement and enhancement of existing capacity and services and requests a predetermination of rolled-in rate treatment for these costs. Northern Border states that age, utilization, and system criticality are the key factors supporting the proposed replacement of the existing compressor units at the Arnegard, Manning, and Glen Ullin Compressor Stations¹⁰⁶ for the purpose of ensuring system reliability. Northern Border points to section 2.55(b) of the Commission's regulations¹⁰⁷ for the proposition that it is appropriate to replace facilities that have or will soon become physically deteriorated or obsolete, and asserts that the compressor units proposed for replacement have been operating at high utilization run rates of 90-95% for ten years, and are becoming more difficult to repair.¹⁰⁸ Northern Border asserts that the replacement of these units, along with the addition of standby compression, will enhance system reliability and improve the flexibility of existing service.¹⁰⁹

83. Indicated Shippers and Northern Border Shipper Group filed comments and a protest, respectively, contending that Northern Border has failed to justify its allocation of \$347 million of facility costs to the replacement component of its project and requesting that the Commission defer a determination of rolled-in rate treatment to a future NGA section 4 rate case.¹¹⁰ They argue that Northern Border has not sufficiently demonstrated which facilities and associated costs should be deemed "replacement" and

¹⁰⁵ *Id.* at 15-16.

¹⁰⁶ Northern Border Application at 2.

¹⁰⁷ 18 C.F.R. § 2.55(b) (2024). Section 2.55 allows certificate holders to replace existing facilities "that have or will become physically deteriorated or obsolete" without obtaining a separate section 7(c) certificate when certain conditions are met. *Id.*

¹⁰⁸ Northern Border Application at 19.

¹⁰⁹ *Id.*

¹¹⁰ Northern Border Shipper Group Protest at 3; Indicated Shippers Comments at 7.

which facilities and costs should be deemed “expansion.”¹¹¹ As an example, Northern Border Shipper Group suggests that the two existing compressor units that Northern Border proposes to place on standby might be used to support the flow of both existing volumes and expansion volumes in the event of an outage and, therefore, it is not clear that Northern Border has appropriately allocated the costs of the facilities modifications at the compressor stations between “replacement” and “expansion” facilities.¹¹²

84. Indicated Shippers argue that Northern Border failed to provide a stand-alone estimate of the cost to replace the compressor units on a “like for like” basis.¹¹³ In its supplemental comments, Indicated Shippers cite the Commission’s recent order in *Gas Transmission Northwest, LLC (GTN)*, in which the Commission denied GTN’s request for a predetermination of rolled-in rate treatment for the entire cost associated with the GTN XPress Project due uncertainty regarding the allocation of costs between existing and expansion capacity.¹¹⁴

85. CAPP also states that the Commission should investigate whether the Northern Border replacement costs qualify for self-authorization under section 2.55(b) of the Commission’s regulations and whether the introduction of “standby” capacity comports with the concept of replacement facilities and if such recovery of costs is therefore just and reasonable.¹¹⁵

86. In its answer, Northern Border clarifies that it is not proposing to replace the facilities pursuant to section 2.55; rather it is seeking NGA section 7 authority for the replacement facilities and had only noted that its proposal would be consistent with section 2.55, and, thus, no investigation into whether the costs qualify for self-authorization under section 2.55 is necessary.¹¹⁶ Additionally, Northern Border submitted a breakdown of the allocated costs¹¹⁷ and the details for the replacement costs

¹¹¹ Northern Border Shipper Group Protest at 3; Indicated Shippers Comments at 5-6.

¹¹² *Id.*

¹¹³ Indicated Shippers Comments at 6.

¹¹⁴ Indicated Shippers October 31, 2023 Supplemental Comments at 2-5 (citing *Gas Transmission Nw., LLC*, 185 FERC ¶ 61,035).

¹¹⁵ CAPP Comments at 6.

¹¹⁶ Northern Border Answer at 3 and n.6.

¹¹⁷ *Id.* at attach. A.

on a “like for like” basis.¹¹⁸ Northern Border also cited to cases in which the Commission purportedly approved a similar methodology for the allocation of costs between expansion and replacement systems.¹¹⁹ Northern Border asserts that GTN does not support deferring the determination of rolled-in rate treatment since GTN proposed to roll in the entire cost, whereas Northern Border proposes to allocate a significant share of the costs to the expansion facilities.¹²⁰ Northern Border reiterates that the remaining horsepower from the new units and the proposed standby horsepower of the existing units will be available for utilization during planned and unplanned compressor unit outages, strengthening Northern Border’s ability to provide reliable service over the long term and benefiting Northern Border’s shippers and the end-use markets that depend on Northern Border’s firm transportation capacity.¹²¹ In response to Commission staff’s data request, Northern Border explains that approximately \$7.1 million associated with the re-wheeling of standby compression has been allocated to the expansion project and that it will allocate capacity during system outages consistent with its FERC Gas Tariff, which does not differentiate base-system capacity from expansion capacity.¹²²

87. Granting a predetermination of rolled-in rate treatment operates to shift the burden of presenting evidence to parties opposing rolled-in rate treatment in a future general NGA section 4 rate case proceeding to demonstrate that there have been material changes since the certificate proceeding that undermine the basis for the predetermination.¹²³ The predetermination of rolled-in rate treatment thus provides some measure of rate certainty to the pipeline applicant, its existing shippers, and prospective shippers.¹²⁴

88. To receive a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for

¹¹⁸ *Id.* at attach. B.

¹¹⁹ Northern Border Answer at 7 (citing *Paiute Pipeline Co.*, 104 FERC ¶ 61,078, at P 27 (2003); *Dominion Transmission, Inc.*, 129 FERC ¶ 61,048, at P 27 (2009); and *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at PP 20-21 (2023)).

¹²⁰ *Id.* at 10.

¹²¹ *Id.* at 3-4.

¹²² Northern Border March 27, 2024 Response to Data Request.

¹²³ *Tex. E. Transmission, LP*, 153 FERC ¶ 61,311, at P 33 (2015).

¹²⁴ *Magnolia LNG, LLC*, 155 FERC ¶ 61,033, at P 40 (2016).

projects constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity.¹²⁵

89. Consistent with the Certificate Policy Statement, the Commission has approved a predetermination of rolled-in rate treatment for mainline expansions that are designed to improve service for existing customers by replacing existing capacity, improving reliability, or providing additional flexibility. The compressor units Northern Border proposes to replace are or will soon become physically deteriorated or obsolete. Northern Border noted in its application that it has experienced over 85 unplanned outages at its compressor stations since 2020,¹²⁶ and that the frequency of unplanned outages stemming from equipment failure has increased over time, due to the age and utilization of the units.¹²⁷ Northern Border's last rate case settlement included a 5.00% depreciation rate for its compressor facilities, implying a 20-year life for these compressor engines. According to its July 15, 2024, data response, the compressors being removed from service are 42 years old and the ones being placed on standby are 32 years and 26 years old, respectively. Therefore, according to the settlement depreciation rate, these engines are passed their life expectancy. Northern Border's proposal to replace the aging units will improve the reliability of its existing system, while the addition of standby compression will provide additional operational flexibility to maintain service in the event of an outage or the need of repairs. Increasing the rates of existing customers to pay for these improvements is not a subsidy and rolling in the cost of such a project into existing rates is appropriate.¹²⁸

90. We find Northern Border's answer to comments and protest and response to staff data request have sufficiently addressed the commenters' arguments and that Northern Border has appropriately allocated costs associated with the standby compression between replacement and expansion shippers. In its answer, Northern Border has submitted a breakdown of the replacement and expansion costs and the details for the replacement costs on a "like for like" basis. In addition, as noted above, Northern Border

¹²⁵ Certificate Policy Statement, 88 FERC at 61,746, n.12.

¹²⁶ Northern Border Application at 6; Northern Border March 27, 2024 Response to Data Request at 2.

¹²⁷ Northern Border March 27, 2024 Response to Data Request at 2.

¹²⁸ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746, n.12, *order on clarification*, 90 FERC ¶ 61,128 at 61,393-94; *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125 (2016) (approving a presumption of rolled-in pricing for the cost of replacement facilities constructed to restore maximum capacity); *ANR Pipeline Co.*, 171 FERC ¶ 61,233 (2020); and *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171 (allowing rolled-in costs for replacement of aging pipe).

explains that it proposes to allocate approximately \$7.1 million associated with the re-wheeling of standby compression to the lease shippers and that it will allocate capacity during system outages consistent with its FERC Gas Tariff.¹²⁹ Finally, we find that the facts in this proceeding differ from those presented in *GTN*. Specifically, Northern Border proposes to allocate 37% of the total costs, including the compressor replacements, to the expansion lease service. In contrast, *GTN* did not propose to allocate any costs of the compressor replacements that it performed under section 2.55 of the Commission's regulations¹³⁰ to the expansion shippers and, among other questions, it appeared that a portion of the replacement horsepower would be activated and used to provide expansion project service.¹³¹ Therefore, we grant Northern Border a predetermination to roll \$347 million of replacement costs associated with the project into its system rates in a future general NGA section 4 rate case, absent a significant change in circumstances.

c. Reporting Incremental Costs

91. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.¹³² Therefore, we will require Northern Border to keep separate books and accounting of costs and revenues attributable to the incremental capacity created by the project as required by section 154.309 and internally for the replacement capacity in the same manner as required by section 154.309 of the Commission's regulations.¹³³ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.¹³⁴

¹²⁹ Northern Border March 27, 2024 Response to Data Request.

¹³⁰ 18 C.F.R. 2.55(b)(ii).

¹³¹ *Gas Transmission Nw., LLC*, 185 FERC ¶ 61,035 at P 53.

¹³² 18 C.F.R. § 154.309 (2024).

¹³³ *Id.*; see *Gulf S. Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (*Gulf South*).

¹³⁴ See *Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008) (cross-referenced at 122 FERC ¶ 61,262). In *Gulf South*, the Commission clarified that a pipeline charging its existing system rates for a project is not required to provide books

d. Fuel

92. Northern Border proposes to charge WIC its generally applicable monthly Company Use Gas rate to recover the gas used as fuel and gas lost or otherwise unaccounted for.¹³⁵ Northern Border calculates an illustrative Company Use Gas rate that accounts for the inclusion of the project on the system of 0.00315%.¹³⁶ Additionally, Northern Border states that the inclusion of the incremental throughput will reduce Northern Border's Electric Compressor Surcharge since the Bison XPress Project will not add or modify any electric compression.¹³⁷

93. Northern Border Shipper Group argues that Northern Border's illustrative project fuel study generates an incremental Company Use Gas rate of 0.00331%, which is higher than the 2022 average Company Use Gas rate of 0.00315%.¹³⁸ Northern Border Shipper Group further argues that the fuel study fails to demonstrate that the incremental throughput will not increase the system fuel rate due to the hypothetical fuel amount and load factors of the Bison XPress Project.¹³⁹ Therefore, Northern Border Shipper Group maintains that Northern Border should charge an incremental fuel rate for the Bison XPress Project.

94. In its answer, Northern Border asserts that Northern Border Shipper Group's approach to calculate the fuel rate ignores the impact the Bison XPress Project will have on existing shippers' fuel costs and fails to consider the system as a whole by cherry-picking numbers. Northern Border further suggests that Northern Border Shipper Group's approach ignores the impact, if any, of the project on existing shippers' fuel

and accounting consistent with Order No. 710. *See Gulf South*, 173 FERC ¶ 61,049 at P 7. However, a pipeline is required to maintain its internal books and accounting such that it would have the ability to include this information in a future FERC Form No. 2 if the rate treatment for the project is changed in a future rate proceeding.

¹³⁵ Northern Border Application at 16.

¹³⁶ *Id.* at 16 and Ex. Z-2.

¹³⁷ *Id.* at n.23.

¹³⁸ Northern Border Shipper Group Protest at n.6.

¹³⁹ *Id.* at 6-7.

costs or retention levels in favor of focusing on the project in isolation and thus fails to demonstrate an actual increase in the system-wide fuel rates.¹⁴⁰

95. In its March 27, 2024, response to a Commission staff data request, Northern Border provided an updated illustrative project fuel study using 2023 calendar year average monthly receipts, deliveries, and company use gas.¹⁴¹ The updated illustrative Company Use Gas rate is 0.00332%, which is equal to the estimated Company Use Gas Rate for 2023. We agree that, based on Northern Border's fuel studies, there will be no impact on fuel for existing shippers due to the Bison XPress Project. In addition, since no electric compressors are being replaced the incremental volumes should reduce the electric compressor surcharge. Therefore, we approve Northern Border's proposal to use its currently effective Company Use Gas rate for the project.

F. Environmental Analysis

96. On October 30, 2023, the Commission issued a *Notice of Scoping for the Bison XPress Project and Request for Comments on Environmental Issues*. The notice was published in the *Federal Register*¹⁴² and 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 potentially affected property owners. No substantive comments on environmental resources were received during the scoping period.

97. On November 15, 2023, the Commission issued a *Notice of Schedule for the Preparation of an Environmental Assessment for the Bison XPress Project*. The notice was published in the *Federal Register* on November 21, 2023,¹⁴³ and mailed to stakeholders on the project's environmental mailing list.

98. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),¹⁴⁴ Commission staff prepared an EA for Northern Border's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation,

¹⁴⁰ Northern Border Answer at 11.

¹⁴¹ Northern Border March 27, 2024 Response to Staff Data Request and Updated Ex. Z-2.

¹⁴² 88 Fed. Reg. 75,572 (Nov. 3, 2023).

¹⁴³ 88 Fed. Reg. 81,077 (Nov. 21, 2023).

¹⁴⁴ 42 U.S.C. §§ 4321 *et seq.*; *see also* 18 C.F.R. pt. 380 (2024) (Commission's regulations implementing NEPA).

fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality and greenhouse gas emissions, noise, safety, socioeconomics, environmental justice,¹⁴⁵ cumulative impacts, including climate change, and alternatives. The analysis in the EA addressed all substantive environmental comments and concluded that the project would not constitute a major federal action significantly affecting the quality of the human environment.¹⁴⁶

99. The EA was issued for a 30-day comment period and placed into the public record on April 8, 2024. A Notice of Availability for the EA was published in the *Federal Register*¹⁴⁷ and was mailed to interested parties, including federal, state, and local officials; local government representatives and agencies; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interest groups; and local libraries and newspapers.

100. In response to the EA, the Commission received comments from Northern Border on May 8, 2024, regarding minor clarifications to the EA. No other comments were filed. Commission staff reviewed Northern Border's clarifications and generally found them accurate. The clarifications do not alter the EA's conclusions.

¹⁴⁵ Under NEPA, the Commission considers impacts to all potentially affected communities. Consistent with Executive Orders 12,898, 14,008, and 14,096 the Commission separately identifies and addresses disproportionate and adverse human health or environmental effects on environmental justice communities. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021); Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 21, 2023). *See infra* PP 101-117.

¹⁴⁶ EA at 68-71, 72. Commission staff could not determine whether the impacts from greenhouse gas emissions attributable to the project would be significant or insignificant. *Id.* at 68-71; *see* 42 U.S.C. § 4336(b)(2) ("An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown...."). We note that NEPA does not require the Commission to classify every environmental impact as significant or insignificant. *See Food & Water Watch v. FERC*, 104 F.4th 336, 346 (D.C. Cir. 2024); *see also Transcon. Gas Pipe Line Co.*, 187 FERC ¶ 61,200, at P 33 (2024) (applying *Food & Water Watch* in the context of an environmental assessment).

¹⁴⁷ 89 Fed. Reg. 25,871 (Apr. 12, 2024).

1. Environmental Justice

101. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Orders 12898 and 14096, which direct federal agencies to identify and address disproportionate and adverse human health or environmental effects of their actions on environmental justice communities.¹⁴⁸ Executive Order 14008 also directs agencies to develop programs, policies, and activities to address the disproportionate and adverse “human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹⁴⁹ Environmental justice is the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁵⁰

¹⁴⁸ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 21, 2023).

¹⁴⁹ Exec. Order No. 14,008, 86 Fed. Reg. 7619, at 7629 (Jan. 27, 2021). The term “environmental justice community” includes communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. See EPA, *EJ 2020 Glossary* (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>.

¹⁵⁰ See EPA, *EJ 2020 Glossary* (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

102. Consistent with the Council on Environmental Quality's (CEQ)¹⁵¹ and U.S. Environmental Protection Agency's (EPA)¹⁵² guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)¹⁵³ exist in the project area; (2) whether impacts on environmental justice communities are disproportionate and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningful greater analysis methods to identify minority populations.¹⁵⁴ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.¹⁵⁵

103. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the county.

¹⁵¹ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were opportunities for public involvement during the Commission's environmental review processes. See *supra* PP 96-100.

¹⁵² See generally EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁵³ See generally, Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

¹⁵⁴ See *Promising Practices* at 21-25.

¹⁵⁵ Here, Commission staff selected Dunn, Grant, McKenzie, Mercer, Morton, and Oliver Counties, North Dakota as the comparable reference communities to ensure that affected environmental justice communities are properly identified.

104. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2022 U.S. Census American Community Survey data¹⁵⁶ for the race, ethnicity, and poverty data at the state, county, and block group level.¹⁵⁷ Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.¹⁵⁸

105. Once staff collected the block group level data, staff conducted an impacts analysis for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionate and adverse on environmental justice communities and also whether those impacts were significant.¹⁵⁹ Commission staff assessed whether impacts on an environmental justice community were disproportionate and adverse based on whether those impacts were predominately borne by that community, consistent with the EPA's recommendations in

¹⁵⁶ U.S. Census Bureau, American Community Survey 2022 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, [https://data.census.gov/cedsci/table?q=B17017;](https://data.census.gov/cedsci/table?q=B17017;File#B03002) File #B03002 Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

¹⁵⁷ The EA used a 25-kilometer radius from the Arnegard Compressor Station to identify potentially affected environmental justice block groups, as the largest extent of potential impacts is associated with the one-hour NO₂ Significant Impact Level (SIL), which extends 24.47 kilometers from the station. For the Manning and Glen Ullin Compressor Stations, the EA used a 20-kilometer radius to identify potentially affected environmental justice block groups, as the largest radii of impact (for the one-hour NO₂ SIL) is 0.63 kilometers and 9.53 kilometers, respectively. EA at 30-31.

¹⁵⁸ EPA, *Purposes and Uses of EJScreen* (Jan. 9, 2024) <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> ("Screening tools should be used for a 'screening-level' look. Screening is a useful first step in understanding or highlighting locations that may be candidates for further review.").

¹⁵⁹ An agency may determine that impacts are disproportionate and adverse but not significant within the meaning of NEPA, and in other circumstances an agency may determine that an impact is *both* disproportionate and adverse *and* significant within the meaning of NEPA. See *Promising Practices* at 33.

Promising Practices.¹⁶⁰ Identified project impacts and proposed mitigation measures are discussed below.

106. The Commission's environmental staff identified 19 block groups within the geographic scope of analysis¹⁶¹ of the three compressor stations that comprise the Bison XPress Project (the Arnegard, Manning, and Glen Ullin Compressor Stations), of which 11 block groups exceeded the defined threshold for minority or low-income communities and therefore, are environmental justice communities.¹⁶² The Glen Ullin Compressor Station is located in a block group that is an environmental justice community based on the low-income threshold. Additionally, there are four environmental justice communities within the geographic scope of this station. No project facilities associated with the Manning and Arnegard Compressor Stations are located within environmental justice communities; however, there are two and four environmental justice communities within the geographic scope of the Manning and Arnegard Stations, respectively.

107. The EA discussed the project's potential socioeconomic, traffic, visual, noise, and air quality impacts on the identified environmental justice communities.¹⁶³ Commission staff concluded that environmental justice concerns are not present for other resource areas such as geology, groundwater, surface water, wetlands, wildlife, or cultural resources due to the minimal overall impact the project would have on those resource areas. We concur with this determination.

a. Traffic

108. As described in the EA, project impacts on traffic in environmental justice communities would be minor and temporary.¹⁶⁴ Northern Border anticipates that construction would take approximately 12 months, with the peak number of non-local

¹⁶⁰ There are various approaches to determining whether an action will cause a disproportionate and adverse impact. One recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations." See *id.* at 44-46.

¹⁶¹ The geographic scope of analysis is a 20-kilometer (12.43 mile) radius from the Manning and Glen Ullin Compressor Stations. A 25-kilometer (15.53 mile) radius was used for the Arnegard Compressor Station (due the radius for one-hour NO₂ being 24.47 kilometers at this station).

¹⁶² EA at 32-34, tbl. B-5.

¹⁶³ *Id.* at 38-41.

¹⁶⁴ *Id.* at 38.

construction workers totaling 300 (approximately 100 workers at each compressor station site) and no new permanent employees required for operation.¹⁶⁵ The project area experiences very little traffic congestion and Northern Border would use traffic control measures, such as flagmen and signage, and limit heavy construction related traffic during peak travel times of the day.¹⁶⁶

109. Based on the temporary and intermittent nature of project construction, the distance between the three compressor station sites, and Northern Border's proposed mitigation measures, the EA concludes that traffic impacts on environmental justice communities would be less than significant.¹⁶⁷ We agree.

b. Visual Resources

110. Project modifications at the Glen Ullin Compressor Station would be visible to the closest residence within an environmental justice community, which is located 0.44 mile west of the station. The EA concludes that impacts would be minor, as construction activities would be temporary and the new equipment being installed is similar in appearance and location to existing facilities at the compressor station.¹⁶⁸

111. The nearest environmental justice community residences to the Arnegard and Manning Compressor Stations are over five miles away. The EA determined that the stations would not likely be visible to residents beyond one mile of the stations, and thus concluded that potential impacts on visual resources for environmental justice communities would be less than significant.¹⁶⁹ We concur.

c. Air Quality

112. The EA determined that air emissions from project construction, which would be minor and short-term, would not cause or contribute to a violation of any applicable ambient air quality standard or significantly affect local or regional air quality in the environmental justice communities in the geographic scopes of the compressor

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

stations.¹⁷⁰ During operations, the modifications to the Arnegard Compressor Station would result in a decrease in nitrogen oxides (NO_x) and carbon monoxide (CO) emissions, and facility-wide NO_x emissions would decrease at the Manning and Glen Ullin Compressor Stations.¹⁷¹ Dispersion modeling for operational emissions at the modified compressor stations demonstrates compliance with the National Ambient Air Quality Standards.¹⁷²

113. Based on the analysis, the EA concludes that the project impacts on air quality on local residents and the surrounding communities, including the environmental justice communities would be less than significant.¹⁷³ We agree.

d. Noise

114. As discussed in the EA, project-related noise would not be perceptible at the nearest environmental justice community residences to the Arnegard and Manning Compressor Stations, as the nearest environmental justice communities are over 5 miles away from both stations.¹⁷⁴ With respect to the Glen Ullin Compressor Station, the nearest noise sensitive area in an environmental justice community is approximately 2,800 feet west of the station.¹⁷⁵ During construction, noise impacts would be localized, temporary, and minor given that the majority of construction activities would be intermittent and conducted between the hours of 7:00 a.m. to 7:00 p.m.¹⁷⁶ However, Northern Border states that weather conditions, site conditions, certain construction techniques, emergencies, or other atypical circumstances might necessitate nighttime work.¹⁷⁷ To ensure that any nighttime construction activities do not result in significant noise impacts, Environmental Condition No. 12 in the appendix to this Order requires Northern Border to restrict noise attributable to nighttime construction activities to no more than 48.6 decibels on the A-weighted scale (dBA) (1-hour equivalent sound level)

¹⁷⁰ *Id.* at 38-39.

¹⁷¹ *Id.* at 51-53.

¹⁷² *Id.* at 54-55.

¹⁷³ *Id.* at 39.

¹⁷⁴ *Id.* at 39-40.

¹⁷⁵ See Northern Border's May 8, 2024 comments on the EA.

¹⁷⁶ EA at 56.

¹⁷⁷ *Id.* at 57.

at nearby noise sensitive areas. During operation, noise attributable to the modified Glen Ullin Compressor Station would be below a day-night sound level of 55 dBA at the closest noise sensitive areas, and the potential noise increase over ambient conditions would be 0.4 dB, which is below a level of change considered perceptible.¹⁷⁸

115. Based on the EA's analysis of predicted construction and operational noise levels, the EA concludes that the project would not have significant noise impacts on the identified environmental justice communities.¹⁷⁹ We agree.

e. Cumulative Impacts

116. Planned modifications to the existing Kurtz Meter Station (owned by Bison Pipeline, LLC)¹⁸⁰ and non-jurisdictional facility upgrades at the Glen Ullin Compressor Station could overlap geographically and temporally with project work at the Glen Ullin Compressor Station, which is within an environmental justice community.¹⁸¹ The majority of impacts would be limited to areas within and directly adjacent to paved and graveled areas within the Glen Ullin Compressor Station and the adjacent Kurtz Meter Station facilities.¹⁸² Potential cumulative impacts on environmental justice communities¹⁸³ within the geographic scope of the project facilities and Manning, Arnegard, and Glen Ullin compressor stations, would be temporary for traffic, visual resources, air quality, and construction noise.¹⁸⁴ Due to the small scale of the project, distance to residences, and proposed mitigation measures, the EA concludes that there

¹⁷⁸ *Id.* at 40.

¹⁷⁹ *Id.*

¹⁸⁰ The Kurtz Meter Station modifications would be completed under Northern Border's blanket certificate issued in Docket No. CP09-161-000. *Id.* at 60.

¹⁸¹ *Id.* at 61.

¹⁸² *Id.*

¹⁸³ No project facilities associated with the Manning and Arnegard Compressor Stations are located within environmental justice communities; however, there are environmental justice communities within the geographic scope of the project facilities. *Id.* at 32-37.

¹⁸⁴ *Id.* at 64-65.

would be no permanent cumulative impacts to environmental justice communities.¹⁸⁵ We agree.

f. Environmental Justice Conclusion

117. As described throughout the EA, the proposed project would have a range of impacts on the environment and on individuals living in the vicinity of the project, including environmental justice populations. The Glen Ullin project facilities are located within an environmental justice community, and environmental justice communities are located within 25-kilometers and 20-kilometers of the Arnegard and Manning Compressor Stations, respectively. Based on the foregoing analysis, impacts associated with the Glen Ullin Compressor Station on environmental justice communities would be disproportionate and adverse as they would be predominately borne by environmental justice communities. Impacts associated with facility modifications at the Arnegard and Manning Compressor Stations would not be disproportionate and adverse as they would not be predominantly borne by environmental justice communities. Project impacts on environmental justice communities associated with traffic, visual resources, noise, and air quality would be less than significant; potential cumulative impacts on environmental justice communities would also be less than significant.¹⁸⁶

2. Environmental Impacts Conclusion

118. We have reviewed the information and analysis contained in the EA, as well as the other information in the record, regarding potential environmental effects of the project. We accept the environmental recommendations in the EA, and we are including them as conditions in an appendix to this order. Based on the analysis in the EA, as supplemented or clarified herein,¹⁸⁷ we conclude that if constructed and operated in accordance with Northern Border's application and supplements, including any commitments made therein, 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.¹⁸⁸

¹⁸⁵ *Id.* at 65.

¹⁸⁶ *Id.* at 38-41 and 64-65.

¹⁸⁷ Although the analysis in the EA provides substantial evidence for our conclusions in this order, it is the order itself that serves as our record of decision. The order supersedes any inconsistent discussion, analysis, or finding in the EA.

¹⁸⁸ We are unable to characterize whether the impacts from greenhouse gas emissions attributable to the project would be significant or insignificant as there currently are no accepted tools or methods to do so. EA at 68-71; *see also supra* note

V. Conclusion

119. The proposed Bakken xPress Project will enable WIC to provide shippers, Hess and ONEOK, with 300,000 Dth/day of firm transportation service from receipt points in North Dakota to the delivery point in Colorado (the Fort Union/WIC Interconnect). The proposed Bison XPress Project will enable Northern Border to provide capacity to WIC for its Bakken xPress Project, as well as enhance the reliability of Northern's system. We find that WIC has demonstrated a need for the Bakken xPress Project, that Northern Border has demonstrated a need for the Bison XPress Project, that the projects will not have adverse impacts on existing shippers or other pipelines and their existing customers, and that the projects' benefits will outweigh any adverse impacts on landowners and surrounding communities. Based on the discussion above, we find that, under section 7 of the NGA, the public convenience and necessity requires approval of the projects, subject to the conditions in this order.

120. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analysis. Thus, Commission staff carefully reviews all information submitted. Only when staff is satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

121. 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.¹⁸⁹

144; Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023) (amending NEPA to provide that preparation of an EA is acceptable when the proposed action "does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown.") (codified at 42 U.S.C. § 4336(b)(2)).

¹⁸⁹ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline*

122. 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 all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern Border, authorizing it to construct and operate the proposed Bison XPress Project, as described and conditioned herein, and as more fully described in the application and subsequent filings, including any commitments made therein.

(B) The certificate authorized in Ordering Paragraph (A) is conditioned on:

- (1) Northern Border's facilities being constructed and made available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Northern Border's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Northern Border's compliance with the environmental conditions contain in the appendix of this order.

(C) A predetermination is granted for Northern Border to roll \$347 million of replacement costs associated with the Bison XPress Project into its system rates in a future general NGA section 4 rate case, absent a significant change in circumstances.

(D) A certificate of public convenience and necessity is issued to WIC for the Bakken xPress Project authorizing it to lease the subject capacity from Northern Border, Bison, and Fort Union, as described herein.

(E) WIC shall file actual tariff records to implement the incremental rate and the related fuel lost and unaccounted for rate for the leased capacity, as well as other

Co., 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

related tariff updates, before the acquisition of the leased capacity from Northern Border, Bison, and Fort Union, as described herein.

(F) The Capacity Lease Agreements filed as Privileged must be re-filed as Public.

(G) WIC shall notify the Commission within 10 days of the acquisition of the leased capacity from Northern Border, Bison, and Fort Union, as described herein, and Northern Border and Bison shall notify the Commission within 10 days of the date of abandonment of the capacity leased to WIC.

(H) Northern Border and Bison are authorized to abandon by lease to WIC capacity on their systems, as described and conditioned herein.

(I) Northern Border is authorized to abandon a 20,000-HP Avon gas-fired, turbine compressor unit at Arnegard Compressor Station, as described and conditioned herein.

(J) A limited jurisdiction certificate of public convenience and necessity is issued to Fort Union authorizing it to lease capacity to WIC and operate the leased capacity, as described herein.

(K) The Commission grants Fort Union waiver, with respect to the leased capacity, of all filing and accounting requirements that might otherwise apply to an NGA pipeline.

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA) for the Bison XPress Project, this authorization includes the following conditions:

1. Northern Border Pipeline Company (Northern Border) 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 EA, unless modified by the Order. Northern Border 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), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction,** Northern Border shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), 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,** Northern Border shall file with the Secretary any revised detailed survey 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 specify locations designated on these alignment maps/sheets.
5. Northern Border's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Northern Border'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.
6. Northern Border shall file with the Secretary detailed maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed that have not been previously identified in filings with the Secretary. Approval for use of 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, or aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*. Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

7. **Within 60 days of the acceptance of the authorization and before construction begins**, Northern Border shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Northern Border must file revisions to the plan as schedules change. The plan shall identify:

- a. how Northern Border 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 order;
- b. how Northern Border 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 Northern Border will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Northern Border's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Northern Border will follow if noncompliance occurs; and
- h. 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.
8. Northern Border shall employ at least one EI during construction of the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern Border shall file updated status reports with the Secretary 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 Northern Border'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 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;

- 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 Northern Border from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern Border's response.
9. Northern Border must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Northern Border must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Northern Border must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Northern Border shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Northern Border 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.
12. **During nighttime (7:00 PM to 7:00 AM) construction activities** at the Arnegard and Glen Ullin Compressor Stations, Northern Border shall monitor noise levels, document the noise levels in the construction status reports, and restrict the noise attributable to nighttime construction activities to no more than 48.6 A-Weighted Decibels (dBA) equivalent sound level (Leq) (1-hour) at nearby NSAs. If noise exceeds 48.6 dBA Leq, Northern Border shall immediately reduce construction activities and/or install and implement mitigation measures to reduce noise attributable to nighttime activities to 48.6 dBA Leq or less.

13. Northern Border shall file noise surveys with the Secretary **no later than 60 days** after placing the modified Arnegard, Manning, and Glen Ullin Compressor Stations in service. If a full load condition noise survey for any one of the stations is not possible, Northern Border shall provide an interim survey for that station at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the modified stations under interim or full horsepower load conditions exceeds a day-night sound level (Ldn) of 55 dBA at any nearby NSAs, Northern Border shall file a report on what changes are needed and install additional noise controls to meet that level **within 1 year** of the in-service date. Northern Border shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.