106 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Northwest Pipeline Corporation Docket Nos. CP01-49-002 and -003

ORDER AMENDING CERTIFICATE

(Issued February 18, 2004)

1. On October 25, 2001, the Commission issued an order in this proceeding authorizing Northwest Pipeline Corporation (Northwest) to construct and operate the Everett Delta Lateral project to provide lateral transportation capacity for a new electric generation plant and a local gas distribution company, Puget Sound Energy, Inc. (Puget), in the state of Washington.[1] On June 25, 2003, in Docket No. CP01-49-002, Northwest filed an application for an amendment to the certificate issued in Docket No. CP01-49-000. Northwest requests authorization to modify the Everett Delta Lateral project to reflect the cancellation of the proposed electric generation plant.[2]

2. In the amended application, Northwest seeks to downsize the originally proposed project from a design capacity of 133,000 Dth per day to 113,117 Dth per day in order to provide service only to Puget. Additionally, Northwest proposes various modifications to the original certificated route to address certain environmental issues. We find it is in the public interest to grant Northwest's request to amend its Everett Delta Lateral project, subject to the conditions discussed below, because the facilities will enable Northwest to provide additional service to Puget to meet load growth on Puget's local distribution system.

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[1] Northwest Pipeline Corp., 96 FERC ¶ 61,129, <u>order denying reh'g and issuing certificate</u>, 97 FERC ¶ 61,089 (2001) (<u>Northwest</u>).

[2] On August 22, 2003, in Docket No. CP01-49-003, Northwest filed a modification of the route proposed in the June 25 amendment.

Background

3. On December 7, 2000, Northwest filed an application to construct and operate the Everett Delta Lateral project to provide service to a new 248 MW electric power plant proposed by Northwest Power Co., LLC (Northwest Power) and to Puget to meet load growth on its local distribution system. The proposed lateral facilities were to consist of: (1) a 9.4 mile, 20-inch diameter lateral extending from Northwest's mainline to interconnects with Northwest Power and Puget in Snohomish County, Washington, (2) two 12-inch diameter taps on Northwest's mainline, (3) two delivery meter stations at the terminus of the lateral to accommodate deliveries to Northwest Power and Puget, and (4) a third valve tap assembly to accommodate a potential second generation plant at the same location. The lateral was to have an initial design capacity of 133,000 Dth per day and cost $17.2 million.

4. After Northwest accepted its certificate, Northwest Power notified Northwest that it had placed a hold on starting construction of its proposed power plant. Under an October 9, 2002 settlement agreement, Northwest terminated its agreement with Northwest Power to construct the proposed facilities.[3] Termination of the agreement with Northwest Power, the original anchor shipper for the Everett Delta Lateral project, automatically terminated the agreement with Puget.

5. Puget subsequently notified Northwest that it wanted to proceed with the project and agreed to reimburse Northwest for its share of the project development costs to that date if Northwest obtained an extension of time to construct the facilities under the existing certificate to allow for the renegotiation of the necessary commercial arrangements for a revised project.[4] Northwest informed Puget that, due to its current capital restraints, Northwest would require Puget to fund any revised project.

6. Puget determined that in order to meet its obligation to provide reliable service to its customers in the north Seattle area by November 1, 2004, it would need to rely on Northwest's acquiring the necessary permits and approvals and constructing a revised Everett Delta Lateral project. Further, Puget concluded that enlarging its participation in the Everett Delta Lateral project from 43,000 Dth to 113,117 Dth per day was the most

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[3] Northwest Power agreed to reimburse Northwest for its share of the development costs.

[4] By letter order dated October 21, 2002, the Commission granted an extension of time until October 3, 2003 for Northwest to complete construction of the facilities.

cost effective way to meet both its long- and short-term needs for additional supplies to this portion of its system.

7. Northwest and Puget entered into various interrelated commercial arrangements under which Puget will reimburse Northwest for construction of the Everett Delta Lateral facilities and will be the passive owner of the facilities. In turn, Northwest will lease back the Everett Delta Lateral facilities from Puget for a term of five years and operate the facilities as part of its interstate pipeline system. During this five year period, Northwest would provide service to Puget under its existing Rate Schedule TF-1. Northwest proposes to charge Puget a negotiated rate that will recover the cost of the lease and the costs of operating and maintaining the Everett Delta Lateral facilities. At the termination of the lease, Puget would incorporate the Everett Delta Lateral facilities into its distribution system. In exchange for Northwest entering into the unique commercial arrangements, Puget has agreed to extend the primary term of several Rate Schedule TF-1 service agreements for capacity on Northwest's mainline for a term of five years.

Proposal

A. Facilities

8. Northwest requests that the Commission amend its existing certificate to authorize Northwest to construct the following revised Everett Delta Lateral facilities, all located in Snohomish County, Washington.

(a) Mainline Tap Facilities: Two 12-inch mainline taps and associated regulators, valves, piping, and appurtenances located at approximately milepost 1411.32 on Northwest's Ignacio, New Mexico to Sumas, Washington 26-inch diameter mainline and 30-inch diameter mainline loop. The Mainline Tap Facilities will be owned and operated by Northwest.

(b) Meter Station Facilities: Two 8-inch turbine meters, electronic flow measurement equipment, meter and control buildings, filter/separator and liquid storage tank, valves, piping and other appurtenances located adjacent to the Mainline Tap Facilities on a site shared both with such facilities and Puget's non-jurisdictional regulator and odorizer facilities. The Meter Station Facilities will be passively owned by Puget, but will be operated by Northwest as part of its interstate transmission system.

(c) Lateral Facilities: Approximately 9.15 miles of 16-inch diameter pipeline extending from the Meter Station Facilities to the Everett Industrial Park, with associated valves, appurtenances and pig launcher and receiver. The Lateral Facilities will include two delivery taps to Puget's distribution facilities, one located at the terminus of the lateral (Everett Tap) and one located at approximately milepost 4.44 on the lateral (Soper Hills Tap). A 16-inch block valve assembly also will be located at milepost 4.44. The lateral facilities will also include tap valves and piping to interconnect with the Meter Station Facilities and to interconnect with, and bypass if necessary, Puget's regulator and odorizer facilities. The Lateral Facilities will have a design capacity of 113,117 Dth per day. The Lateral Facilities will be owned by Puget, but will be leased to Northwest under the Lease Agreement for a five-year term and operated by Northwest.

9. Northwest estimates that the revised Everett Delta Lateral project will cost $24.6 million. Consistent with the Delivery Facilities reimbursement provisions in Northwest's tariff, Puget will make advance payments and reimburse Northwest in full for the actual construction costs.

10. The Commission prepared an environmental assessment (EA) for the original Everett Delta Lateral project. The facility differences in the amended versus the certificated project are: smaller diameter pipeline; slightly less pipeline; one less meter station; and small changes to related facilities. The amended application also includes various route changes for which the Commission prepared an amended EA.

11. While most of the changes are minor, the primary route change involves the certificated route at the Catherine Creek crossing. The October 25 Order included a condition requiring a study of the crossing at Catherine Creek by horizontal directional drill (HDD). Subsequent geotechnical investigations and site analysis have determined that the HDD has less than a 25 percent probability of success, due to the amount of subsurface gravels and cobbles that would be encountered along the path of the HDD. In the amended application, Northwest proposes a route that affects the alignment in the Catherine Creek area with the majority of the route to be located within the rights-of-way of existing roadways.

B. Commercial Arrangements

12. The commercial arrangements underlying the Everett Delta Lateral project include a Facilities Agreement, Lease Agreement, O&M Agreement, Meter Operating Agreement, and various transportation agreements.

1. **Facilities Agreement**

13. The Facilities Agreement addresses the design, permitting, construction and ownership provisions of the revised Everett Delta Lateral project facilities. It specifies the ownership of each of the project facilities, as defined above. The Facilities Agreement provides for the interconnection of the Delivery Facilities with the related non-jurisdictional regulator and odorizer facilities to be constructed and operated by Puget. Finally, consistent with the facilities reimbursement provisions of Northwest's tariff, Puget will reimburse Northwest through monthly pre-payments for the entire cost of the project, including income tax gross-up related to reimbursement of the costs of the Mainline Tap Facilities.

2. **Lease Agreement**

14. The Lease Agreement provides for Puget to lease the proposed facilities to Northwest for a five-year term commencing with the in-service date of the facilities. Northwest will pay Puget a monthly rent based upon Puget's projected cost-of-service attributable to the proposed facilities with an annual true-up and adjustment to reconcile with Puget's actual cost-of-service. Puget will use the capital cost recovery methodologies underlying its distribution rate approved by the Washington Utilities and Transportation Commission (Washington Commission) to estimate the monthly rent to be paid by Northwest. Based upon the estimated capital costs and Puget's costs related to developing the project, the estimated monthly rent will be approximately $98,000. Northwest will also be responsible for paying any property taxes assessed on the Lateral Facilities and for maintaining insurance coverage.

15. The Lease Agreement also specifies how Northwest may modify or expand the proposed facilities to accommodate requests for additional service by third parties. Under the Lease Agreement, Northwest must implement any modification or expansion in a manner that will not increase Puget's costs. Further, the Lease Agreement requires that any modifications will not adversely affect Puget's rights to the proposed facilities or Puget's ability to incorporate the Lateral Facilities into its distribution system regulated by the Washington Commission. Further, the Lease Agreement precludes Northwest from granting any rights on the Lateral Facilities to any third party shippers that survive expiration of the lease, unless Puget consents or the Commission so mandates.

16. Finally, the Lease Agreement provides that if Northwest (directly or by a third party reimbursement) funds any modifications to the Lateral Facilities, at the expiration of the lease Puget will have the option, subject to Commission approval, to: (i) have Northwest remove/disconnect the facilities; or (ii) purchase any such facilities owned by Northwest at a mutually agreeable price. Northwest requests pre-granted abandonment

approval to abandon its lease and operation of the proposed facilities at the end of the five-year term of the lease agreement.

3. **O&M Agreement**

17. The O&M Agreement sets forth: (i) Northwest's responsibility to provide all necessary operation and maintenance service for the Lateral Facilities during the term of the lease; and (ii) Puget's responsibilities to reimburse Northwest for such services. The services covered under the O&M Agreement include routine services accounted for as expenses directly assignable to the Lateral Facilities, major maintenance accounted for as capital additions or improvements, and any necessary emergency services.

18. Finally, all costs reasonably incurred by Northwest under the O&M Agreement, including the operation and maintenance responsibilities identified in the Lease Agreement, are to be fully reimbursed by Puget. Northwest's actual expenses for operation and maintenance services, taxes, and insurance directly assignable to the Lateral Facilities will be reimbursed by inclusion in the negotiated rate Northwest proposes to charge Puget. Any costs for major maintenance, emergency services, and any costs associated with surrendering Lateral Facilities to Puget at the termination of the Lease Agreement will be directly invoiced to Puget.

4. **Meter Operating Agreement**

19. The Meter Operating Agreement sets forth provisions for Northwest's operation of the Meter Station Facilities, including the expansion of the facilities to accommodate requests for additional service by third parties. The Meter Operating Agreement provides that Puget will not reimburse Northwest for routine operating and maintenance services, emergency services, and insurance unless the related costs are disallowed from recovery in Northwest's rates. However, Puget will reimburse Northwest's actual costs for any repairs.

5. **Transportation Agreements**

20. Under the service agreement for the proposed facilities, Puget reserves all of the firm capacity (113,117 Dth per day) for a five-year term commencing with the in-service date of the proposed facilities. Northwest and Puget have negotiated a rate that is designed to ensure that Northwest collects the monthly amounts that are necessary for Northwest to make its payments under the Lease Agreement and to cover its incremental operating costs under the O&M Agreement. The negotiated rate also requires Puget to pay a rate equivalent to Northwest's maximum Rate Schedule TI-1 rate for nominations

for alternate receipt points, or any capacity release replacement agreement that involves an alternate receipt point.

21. Northwest states that the service agreement for the proposed facilities conforms to Northwest's tariff for Rate Schedule TF-1 service except that: (i) Article 4.1 provides for the termination of the service agreement if either the Facilities or Lease Agreement are terminated; (ii) Article 4.1 limits Puget's right of first refusal; (iii) Article 8.1 specifies Puget's firm capacity entitlement; and (iv) Exhibit B specifies the minimum delivery pressure at the Meter Station Facilities.

22. Puget has 336,477 Dth per day of mainline capacity reserved on Northwest's facilities under four Rate Schedule TF-1 transportation service agreements. The primary terms of the existing transportation agreements expire on October 31, 2004, with a year to year unilateral evergreen right. Puget and Northwest have amended the agreements to reflect a five-year primary term extension from October 31, 2004 to October 31, 2009 (Term Extension Amendments).

23. Northwest states that each Term Extension Amendment includes a non-conforming provision dictating that the amendment will become null and void in the event Northwest refuses to accept a Commission certificate for the proposed facilities, unless Puget directs Northwest not to accept the certificate. It also allows Puget to terminate the Facilities Agreement and proceed with construction of comparable facilities as part of its non-jurisdictional system if Northwest fails to fulfill its obligations under the Facilities Agreement with respect to becoming Puget's engineering, procurement, and construction management (EPCM) contractor for such facilities, or if Northwest fails to fulfill its contractual obligations under any resulting EPCM contract. Northwest states that the Term Extension Amendments were quid pro quo for Northwest going forward with the project.

Notice and Intervention

24. Notices of Northwest's amendments in Docket Nos. CP01-49-002 and -003 were published in the Federal Register on July 10, 2003 (68 Fed. Reg. 41119) and August 22, 2003 (68 Fed. Reg. 53157), respectively. Timely, unopposed motions to intervene were filed by Clayton and Linda Carnell; Crescent Capital X, LLC; Lake Stevens Residents; Overlake Management Company; Puget Sound Energy, Inc.; Snohomish County, Washington; and Mattie Davis-Wolfe and William D. Thomson.[5] Timely, unopposed

[5]See Northwest, 96 FERC at 61,543 for a list of parties that previously intervened in this proceeding.

motions to intervene are automatically granted under Rule 214 of the Commission's Rules of Practice and Procedure.

25. Puget filed comments in support of the proposed amendment. Northwest Industrial Gas Users (Industrial Users) filed a conditional protest. Greg Deer filed a response to the proposed amendment. Puget and Northwest filed answers to the Industrial Users' conditional protest. While Rule 213 of the Commission's Rules of Practice and Procedure[6] does not permit answers to protests, the Commission will accept these pleadings because they provide more complete insights into the issues in the proceeding.

Discussion

26. Since the application pertains to facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Northwest's proposal is subject to the requirements of NGA subsections (c) and (e).

A. Public Convenience and Necessity

27. The July 26 Preliminary Determination and October 25 Final Order analyzed Northwest's original proposal to serve Northwest Power's new electric generation facility and Puget's local distribution company in light of the Commission's Certificate Policy Statement[7] and found that it was in the public convenience and necessity.[8] Specifically, these orders found that Northwest's existing customers would not subsidize the project and it would not adversely affect their service. The orders also found that the proposal would not adversely affect other pipelines and their captive customers.

28. In its request to amend its certificate authorization, Northwest essentially proposes to scale down its proposed project from 133,000 to 113,117 Dth per day to serve exclusively Puget. The project will enable Puget to meet continued load growth for the 2004-05 heating season and subsequent years. Puget will reserve the full capacity of the

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[6] 18 C.F.R. § 385.213 (2003).

[7] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000)(Policy Statement).

[8] See Northwest, 96 FERC at 61,540-41.

amended facilities and reimburse Northwest for the project costs. Further, Puget will reimburse Northwest for the lease payment Northwest will in turn pay to Puget. Since Puget will be responsible for all the costs associated with the construction and operation of the proposed facilities, there will not be any increase in systemwide rates. As such, Northwest's proposal will not result in subsidization from its existing customers.

29. Puget's gas distribution system in north Seattle serves approximately 100,000 residential and commercial customers and some of Puget's largest industrial customers. Puget states that the communities in north Seattle have seen substantial growth in the past ten years due to new residential and commercial development and substantial electric to gas conversion. It asserts that some of the communities in this area have grown an average of three percent a year, while in other areas demand has grown an average of ten percent per year. Puget states that future growth rates are forecast to continue at these levels or possibly increase due to community development plans and increased optimism for job growth in the area.

30. Greg Deer and Crescent Capital contend that there is no proven need for the proposed pipeline and that there is no public purpose or benefit. Greg Deer argues that because the power plant project was cancelled, the primary justification for the project no longer exists and the amended project does not satisfy the public convenience and necessity. We disagree. In the original proceeding, Puget subscribed to 43,000 Dth per day to meet its system demand for the 2004-05 heating season. Puget states that those initial volumes were expected to be a timely, but not permanent, solution to meet demand growth in the north Seattle area. Puget asserts that subsequent modeling and analysis of the costs and complexities of future upgrades to Puget's north Seattle distribution systems demonstrated that the most cost effective method to solve Puget's short and long term needs for additional supply was to contract for the 113,117 Dth per day proposed in this proceeding. Accordingly, we find that Northwest and Puget have sufficiently demonstrated a present and future need for the proposed facilities.

31. Puget has subscribed to the full capacity of the proposed facilities. Further, Puget will reimburse Northwest for all costs associated with the construction and operation of the facilities, as well as future lease and operating costs. The proposal will not adversely affect other pipelines or their captive customers.

32. Northwest states that for the original alignment, excluding the Catherine Creek crossing,[9] it needs to obtain easement agreements from 55 property owners. It currently has easement agreements with 28 owners and expects to be able to negotiate easements with another 20 owners. It states that it anticipates that it may need to commence condemnation procedures with seven property owners. However, Northwest states that based on its past experience, the majority of condemnation proceedings are resolved by settlement.

33. The Commission finds that Northwest's proposal will provide substantial benefits, can proceed without subsidies, and will not adversely affect or degrade service to Northwest's existing shippers. The only adverse impact from this project may be on affected landowners in the event that Northwest is unable to negotiate necessary easements and must exercise eminent domain. However, we find that the benefits and the demonstrated public need for the project outweigh any potential adverse impacts. Therefore, we find the proposal is consistent with the Policy Statement and NGA Section 7(c). Accordingly, we conclude that Northwest's proposed project is required by the public convenience and necessity.

B. Rate/Tariff Issues

1. Recourse/Negotiated Rate

34. Northwest proposes to charge its generally applicable transportation rate for service under Part 284 of the Commission's regulations as the recourse rate for services on the proposed facilities.

35. Northwest states that Puget has reserved all the capacity on the proposed facilities for a five-year term. Puget will pay a negotiated rate under its service agreement that is designed to cover all the expenses incurred by Northwest in leasing and operating the proposed facilities. Northwest also asserts that the negotiated rate is less than the recourse rate and is less than the hypothetical cost-of-service that would have been attributable to the proposed facilities if Northwest had received no lump-sum

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[9] The Commission analyzed several alternatives for the crossing at Catherine Creek. Northwest states that it has not commenced easement negotiations for the Catherine Creek crossing while it awaits a decision from the Commission concerning the final route. The modified certificate route, approved by the Commission and addressed below, will require that Northwest negotiate easement agreements with four property owners at the Catherine Creek crossing.

construction cost reimbursement. Northwest requests that the Commission make a pre-determination that the negotiated rate will be acceptable.

36. The Commission finds that the proposed negotiated rate is in the public interest. Operation and Maintenance expenses incurred by Northwest in fulfilling its obligations under the O&M Agreement will be reimbursed by Puget, as will taxes and incremental insurance directly assignable to the lateral facilities. These have been included in the negotiated rate under the transportation service agreement. The rate fully covers the lease and operation expenses incurred by Northwest for the proposed facilities. Specifically, Northwest provides an illustrative cost of service, which includes O&M expenses, lease payments,[10] and ad valorem taxes, for a total of $1,553,064. The revenues projected to be generated by the negotiated rate are $1,553,064, which fully covers the cost of service.

2. Rate Treatment Determination

37. Northwest states that its incremental expenses and revenues attributable to the proposed facilities are projected to be equal. Northwest requests an up-front determination that, in the event of a general rate proceeding while Northwest is leasing and operating the facilities, the proposed facilities will qualify for rolled-in rate treatment without any attribution of additional cost-of-service responsibility to the firm capacity reserved by Puget under its service agreement. Northwest contends that the limited-term nature of the service agreement, the Lease Agreement, and O&M Agreement justify such a determination, even though comparable delivery facilities operated by Northwest for long-term service would require allocations of various direct and indirect system costs to reserved firm transportation capacity.

38. Industrial Users request that the Commission reject Northwest's request for an up-front determination that the facilities qualify for rolled-in rate treatment without any attribution of additional cost-of-service responsibility to Puget. It argues that Northwest's request is inconsistent with Commission precedent on similar lateral projects to serve incremental load.[11] Industrial Users contend that if Northwest is allowed to roll in rates without any additional cost-of-service attribution to Puget, it would expose Northwest's other shippers to cost risks for facilities designated only to serve Puget.

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[10] The monthly lease payments are calculated by Puget based upon the methodologies used by Puget to formulate natural gas distribution system rates, as established by the Washington Commission.

[11] Citing Questar Pipeline Co., 95 FERC ¶ 61,404 at 62,503 (2001)(Questar).

39. In response, Northwest states that Industrial Users' subsidization concerns are unfounded and its request for rolled-in recourse rate treatment should not be denied. It contends that Puget is fully funding the construction of the proposed new facilities and that the negotiated rate ensures that all incremental costs incurred by Northwest in leasing and operating the facilities will be recovered from Puget during the five-year term of the lease. Northwest asserts that after the lease terminates and Puget assumes operation of the lateral, Northwest will no longer incur related incremental costs. Northwest concludes that there is no cost risk to other shippers and no possibility for rolled-in rates to increase in a potential future rate case. Puget offers a similar response in its answer.

40. The Commission will approve Northwest's request for a pre-approval of rolled-in recourse rate treatment of the proposed facilities without any attribution of additional cost of service responsibility to the firm lateral capacity reserved by Puget. Puget will pay in advance and reimburse Northwest in full for the actual construction costs. Northwest will pay Puget a monthly rent under the lease based upon Puget's cost of service attributable to the lateral facilities, with an annual true-up for reconciliation of projected and actual costs. Additionally, Puget will reimburse the cost of the pre-construction activities upon termination of the facilities agreement. In addition, any costs for major maintenance, emergency services, and any costs associated with surrendering the Lateral Facilities to Puget at the termination of the Lease Agreement will be directly invoiced to Puget. Because Puget will reimburse all the costs associated with the proposed facilities, there would be no rate impact if the facilities were rolled-in in the next rate case.

41. Industrial Users cite to Questar to support their argument against a predetermination of rolled-in rate treatment. In response, Northwest argues that in Questar, the Commission declined to approve rolled-in rate treatment for a mainline expansion because the costs of the project exceeded the projected revenue for each of the first five years. As Northwest argues, Questar is distinguishable, for there the costs exceeded the revenues and rolled-in rate treatment would have impacted system rates.[12] The Commission concludes that in this instance, based on the short term nature of the arrangement and the fact that the revenues equal the costs, it is appropriate to grant Northwest's request for pre-approval of rolled-in rate treatment without any attribution of additional cost of service responsibility to the firm lateral capacity reserved by Puget.

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[12] See Questar, 93 FERC ¶ 61,279 at 61,923 (2000).

3. Non-Conforming Contract Provision Approvals

42. Northwest states that the service agreement contains non-conforming contract provisions that are necessary because of the proposed facilities' design and commercial arrangements. It states that these provisions clarify that: (1) the service agreement must terminate early if the prerequisite or underlying project agreements terminate early; (2) the service agreement will not have a regulatory right-of-first-refusal at the concurrent termination of the service agreement, lease and O&M agreements; (3) the reserve capacity quantities specified in the service agreement are intended to match the firm design capacity of the proposed facilities, even if the design capacity of the proposed facilities is altered; and (4) the stated delivery point pressure commitments will be deemed satisfied by Northwest's maintaining a minimum 525 psig pressure at the outlet of the Meter Station Facilities.

43. Northwest also states that the Term Extension Agreements[13] also include non-conforming provisions that will make the extensions null and void if: (1) Northwest refuses to accept a Commission certificate for the proposed facilities, unless directed by Puget not to do so; or (2) Puget elects to terminate the Facilities Agreement and proceed with construction of comparable facilities as part of its non-jurisdictional system or Northwest fails to fulfill its obligations under the Facilities Agreement with respect to becoming Puget's engineering, procurement, construction management (EPCM) contractor for such facilities, or fails to fulfill its contractual obligations under any resulting EPCM contract.

44. Northwest contends that the non-conforming provisions in the service agreement and the Term Extension Amendments address the unique characteristics of the commercial arrangements with Puget for the proposed facilities, without providing Puget an unfair advantage over other shippers or negatively affecting the services provided by Northwest to other shippers. Northwest states that prior to commencing service it will file the service agreement and the Term Extension Agreements as non-conforming agreements. It requests that the Commission make a predetermination that the contract provisions will be approved.

45. The non-conforming provisions in the service agreement and the Term Extension Agreement are generally unique to the Puget agreements and are related to the limited

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[13] The Term Extension Agreements extended four service agreements Puget has with Northwest for mainline capacity to reflect a five-year primary term extension from October 31, 2004 to October 31, 2009.

term nature of the contractual arrangements. As such, these provisions should not adversely affect Northwest's other shippers. The Commission finds, however, that it is premature to pre-approve these provisions prior to Northwest's filing the service agreement for the proposed service and the Term Extension Amendments with the Commission as non-conforming agreements.

4. <u>Tariff Waivers</u>

46. Northwest states that it believes that the provisions of its service agreements, Lease Agreement and O&M Agreement are consistent with its tariff. However, it requests, in the event of any inconsistency, approval of the necessary tariff waivers. Specifically, Northwest points to its discounted recourse rate provision in its tariff. It contends that since Puget's base negotiated rate under its service agreement for the proposed facilities is designed to recover only incremental costs directly assignable to the proposed facilities, Northwest deems that Puget is not similarly situated to any discount rate shipper on Northwest's system and, thus, will not be entitled to the benefits cited in that tariff provision. It states that the negotiated rate under the service agreement includes a component requiring Puget to pay a rate equivalent to Northwest's maximum Rate Schedule TI-1 rate for nominations for alternate receipt points, or any capacity release replacement agreement that involves an alternate receipt point. However, it asserts that in the event that section 3.5(b) of the Rate Schedule TF-1 is determined to be applicable to Puget's service agreement, Northwest requests approval of the necessary tariff waiver to allow the subject negotiated rate component be enforced.

47. The Commission finds that, in the case of the discounted recourse rate provision, no waiver is necessary. As Northwest points out, Puget is not similarly situated with other Northwest shippers because of the unique arrangements of its agreements and its negotiated rate with Northwest. Thus, Puget would not be eligible for the benefits in that tariff provision, and a waiver is not necessary. In the event that another shipper becomes similarly situated, Northwest would evaluate any request by Puget under its tariff provisions. However, we will not grant a blanket waiver of any presently unknown potentially inconsistent tariff provision.

5. <u>Similarly Situated Shippers</u>

48. Industrial Users request that the Commission clarify that Northwest is required to offer lateral expansions similar to the one proposed here to other similarly situated shippers in the future. It contends that without a condition that specifically requires similar treatment in Northwest's tariff or as part of this order, Northwest will be providing Puget with preferential treatment with regard to expanding its system to meet one shipper's capacity needs.

49. In response, Northwest states that there is no need to require a new, specific condition in this proceeding requiring that it provide similar expansion to similarly situated shippers. It contends that as long as a mutual agreement can be reached on the underlying contractual terms and conditions, it is willing to exercise its discretion to construct customer requested laterals under section 21 of the General Terms and Conditions in its tariff. Northwest asserts that it is obligated to apply such tariff provisions in the same manner to similarly situated customers.

50. Northwest reiterates that the proposed project is based on unique circumstances and commercial arrangements, including Puget's agreement to extend the primary term of its firm mainline transportation service for an additional five years. It states that in determining whether any future shipper requesting a new delivery lateral will be deemed similarly situated, Northwest will comparatively evaluate the underlying circumstances and proffered commercial agreements. Northwest asserts that if Industrial Users acquire evidence that Northwest is applying the applicable tariff provisions in an unduly discriminatory manner in addressing a specific future lateral request, its rights are fully protected by its ability to file a complaint with the Commission. It its response, Puget raises similar arguments.

51. The Commission agrees with Northwest and Puget that Northwest is already required to offer services and apply its tariff provisions on a non-discriminatory basis to similarly situated customers. Northwest states that it is willing to exercise its discretion to construct customer-requested laterals and that a customer has the ability to file a complaint with the Commission if it believes that Northwest has acted in a discriminatory manner. The Commission will thus deny Industrial Users' request that Northwest modify its tariff to require that Northwest offer similar lateral expansion to other similarly situated shippers.

6. <u>Open Access Service</u>

52. Industrial Users state that as long as the proposed facilities are jurisdictional interstate facilities, they must be operated as open access facilities. They contend that if a third party seeks service on the facilities over the next five years, Northwest must be required to provide the customer with access under its tariff. Further, Industrial Users assert that if the prospective shipper is willing to pay for system upgrades, that shipper should be accommodated under Northwest's tariff and the Commission's open access policies.

53. Industrial Users also state that while the facilities are under the Commission's jurisdiction, Puget should not have veto power over other entities having the right to access or upgrade the facilities. They contend that giving Puget veto power grants Puget

unlawful preferential treatment and an unfair advantage over other shippers by a negotiated term of service not extended to other shippers in its tariff. Industrial Users assert that current Commission policy does not permit the negotiation of contractual terms and conditions that provide an unfair advantage over other shippers.[14] They request that the Commission reject section 1.10 of the Puget Lease Agreement insofar as it gives Puget preferential veto power over other shippers' access to the lateral facilities or to potential upgrades to these facilities.

54. In response, Northwest states that it recognizes that, as long as the proposed facilities are under the Commission's jurisdiction, the facilities must be operated as open access facilities. It points to section 1.10 of the Lease Agreement that emphasizes that Northwest has the right to modify or expand the proposed facilities to accommodate service requests from third parties. Northwest also argues that Industrial Users failed to identify the provision in section 1.10 of the Lease Agreement that supposedly gives Puget a veto power over other shippers' rights to request access to or upgrade the proposed facilities. Northwest asserts that, in fact, there is no such veto provision. It explains that under section 1.10 it is required to discuss such implementation with Puget and ensure that the implementation will not increase Puget's costs, adversely impact Puget's contractual rights, or intentionally interfere with Puget's ability to place the proposed facilities into service as part of its distribution system upon termination of the lease agreement. Additionally, Puget contends that it intends to continue to provide open access service on the proposed facilities after the facilities are abandoned and incorporated into Puget's distribution system.

55. As Northwest points out, as long as the proposed facilities are operated as jurisdictional interstate facilities, they must be operated on an open access basis. As such, Northwest's shippers may request interruptible service on the proposed facilities and may use the delivery points on an alternative basis, if capacity is available. We will put Northwest on notice, however, that it may not deny access to third parties because Puget believes that allowing access to that third party may subsequently impact Puget's ability to incorporate the facilities into its distribution system upon termination of the lease. As discussed below, we are denying Northwest's request for pre-granted abandonment authorization. At the expiration of the Lease Agreement, the Commission will determine based on the present use of the facilities if the present or future public convenience or necessity permit the abandonment based on the use of that facility at that time.

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[14] Citing Northwest Pipeline Corp., 97 FERC ¶ 61,163 at 61,731 (2001).

C. Pregranted Abandonment

56. Northwest requests pre-granted abandonment approval to abandon its lease and operation of the proposed facilities at the end of the five-year term of the Lease and O&M Operating Agreements. Northwest states that at the end of the lease, Puget intends to operate the proposed facilities as part of its local distribution system under the jurisdiction of the Washington Commission.

57. Industrial Users request that the Commission clarify that it will not allow Puget to have the unfettered right to order the removal or disconnection of any third party facility expansions at the end of the five-year term of the lease agreement. They contend that this provision would prevent any shipper from building a direct connection to the facilities.

58. In response, Northwest states that section 1.10 of the Lease Agreement clarifies that Puget does not have the right to order the removal or disconnection of any third party facility expansion at the end of the five-year lease. It contends that the Lease Agreement clearly sets forth that exercise of any of Puget's options in this regard are subject to the Commission's approval.

59. The Commission cannot make a public interest determination based on speculative facts and circumstances that may or may not take place some time over the five-year term of the lease. As discussed above, because the proposed facilities will be subject to the Commission's jurisdiction, they must be operated on an open access basis. As such, Northwest must allow other potential shippers access to the proposed facilities. The Commission will need to review the current use of the pipeline facilities before it can determine if the present or future public convenience would permit a future abandonment.

60. Northwest states that the lease provides that Puget's actions concerning removal of any third party facilities from the proposed facilities is subject to Commission approval. However, Puget is not subject to the Commission's jurisdiction. Further, once the facilities become part of Puget's distribution system they also will not be subject to the Commission's jurisdiction. In any event, the Commission cannot determine, at this time, if the removal of any potential third parties' facilities will be in the public interest.

61. Northwest cites to Granite State Gas Transmission, Inc. (Granite State)[15] to support its request for pre-granted abandonment. In Granite State, the Commission

[15] 83 FERC ¶ 61,051 (1998).

approved a request for pre-granted abandonment for a one-year extension of Granite State's existing lease with Bay State Gas Company while Granite State awaited the completion of the Portland Natural Gas Transmission System (PNGTS) that was under construction at that time. Based on the facts and circumstances in that case, the Commission could determine that the replacement capacity on PNGTS was sufficient to protect Granite State's existing customers and granted the pregranted abandonment authorization. The Commission cannot now predict the impact of the abandonment on customers that may or may not be relying on the proposed facilities five years from now. As such, we will require that Northwest seek abandonment at that time.

D. Puget's Jurisdictional Status

62. Puget requests that the Commission confirm that Puget will not become a "natural gas company" within the meaning of NGA Section 2 solely because of owning and leasing the proposed lateral and meter station facilities. While Puget will be the passive owner of the proposed facilities, Northwest will hold the certificate to operate the leased facilities as part of its interstate pipeline system. Accordingly, Puget would not become a natural gas company solely by virtue of leasing the facility for Northwest's use.[16]

E. Environmental Review

63. On September 3, 2003, the Commission issued a Notice of Intent to Prepare a Supplemental Environmental Assessment for the Amended Everett Delta Project (NOI). Responses to the NOI were received from various Federal, state, and local agencies, landowners, and local businesses. Substantive comments received in response to the NOI were addressed in the amended environmental assessment (EA).

64. The amended EA adopted by reference the EA prepared for the original proposed project. The amended EA focused on the amendments to determine if they affected the Commission's conclusion in the original EA. The amended EA addresses water resources, wetlands, fisheries, vegetation, wildlife, threatened and endangered species, land use, cultural resources, air quality and noise, pipeline safety, and alternatives.

65. On December 23, 2003, the Commission issued an amended EA for the proposed project. Comments to the amended EA were received from Roland J. Van Haeften, Greg Deer, and Snohomish County. Additionally, the U.S. Department of Health and Human Services commented in support of the conclusion that the approval of this project would

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[16] See Granite State, 40 FERC ¶ 61,165 at 61,527-28 (1987).

not constitute a major Federal action significantly affecting the quality of the human environment if the proposed mitigation measures and recommendations are followed.

66. As stated, the October 25 Order included a condition requiring a study of the crossing of Catherine Creek by HDD. Subsequent geotechnical investigations and site analysis have determined that the HDD has less than a 25 percent probability of success, due to the amount of subsurface gravels and cobbles that would be encountered along the path of the HDD. In the amended application, Northwest proposes a route that affects the alignment in the Catherine Creek area with the majority of the route within the rights-of-way of Callow Road and Holly Lane.

67. The amended EA evaluated three alternatives to the proposed route: (1) an intermediate alternative proposed by Snohomish County;[17] (2) the certificated route; and (3) the modified certificated route.[18] Additionally, in response to numerous requests, the amended EA re-examined the possibility of the pipeline paralleling State Highway 92.

68. The EA concluded that the modified certificated route was the preferred route. After extensive consultations with the U.S. Army Corps of Engineers, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and Washington Department of Ecology (WDOE), the amended EA determined that this route is feasible and environmentally acceptable if Northwest agrees not to remove any of the mature conifers. In light of the public comments and concerns about the route being located on Callow Road, the modified certificate route is the best practical alternative. The route would not affect future development and, except for the minimal forested wetland impact, the pipeline crossing of Catherine Creek would be primarily a temporary impact.

69. Mr. Van Haeften requests that the Commission reconsider the dismissal of the State Highway 92 alternative route. In the February 2001 Order, the Commission determined that an alternative route following the south side of State Highway 92 was not environmentally preferable to either the proposed route or the HDD crossing of Catherine Creek due to increased forest, waterbody, residential, and traffic impacts. In Northwest's

[17]The intermediate alternative is located between the certificate route and the route proposed in the amendment. This alternative aimed to avoid the potential impacts on residents along the proposed route and to minimize impacts to the Catherine Creek wetland complex resulting from an open cut crossing that area.

[18]The modified certificate route included a flumed crossing of Catherine Creek and a traditional (or open cut) crossing of the associated wetland complex instead of a HDD.

amended filing, the Commission examined the possibility of paralleling State Highway 92 on the north side. The amended EA concluded that an alternative following the north side of State Highway 92 is not environmentally preferable to the modified certificated route. The State Highway 92 north alternative would impact more residences within 50 feet of the pipeline right-of-way, more wetlands and forested wetlands, more riparian areas, more permanent wetland, and is longer. Mr. Van Haeften has not provided any new information to warrant a re-examination of that conclusion.

70. Snohomish County disagrees with the finding in the amended EA that states that Snohomish County does not rely on groundwater resources for public drinking water supplies. It states that approximately 25 percent of the population and over 50 percent of the county relies on groundwater and well systems to provide their drinking water supplies. We will revise the amended EA accordingly.

71. Snohomish County also requests that Northwest prepare a hydrogeologic site evaluation and monitoring report for HDD activities in order to protect groundwater resources from any contamination. The drilling mud used during HDD installation is composed of non-toxic compounds, including bentonite clay, and would not contaminate groundwater resources in the event of a spill or leak. Northwest has incorporated best management practices into its Spill Prevention, Containment, and Countermeasures (SPCC) Plan that would protect groundwater from any chemical or petroleum spills associated with construction. In addition, the HDD crossings would not be located within any wellhead protection areas and Northwest has prepared a Groundwater Monitoring and Mitigation Plan to ensure that private groundwater supply wells, springs and seeps are not damaged. We believe that Northwest's proposed mitigation is sufficient to protect groundwater resources.[19]

72. Mr. Deer contends that the modified certificated route would have far more significant adverse impacts than Northwest's proposed route. The main difference in the modified certificated route and Northwest's proposed route is the amount of wetland impact. Through consultations with Federal, state and local agencies the Commission has determined that the modified certificate route is feasible and environmentally acceptable, if Northwest agrees not to remove any of the mature conifers. Due to the public comments and concerns of the route being located on Callow Road, we believe this is the best practical alternative. The route would not affect future development and, except for

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[19] Snohomish County also commented that it supports the Modified Certificated Route in order to lessen impacts on landowners adjacent to Callow Road and Holly Lane.

the forested wetland impact, the pipeline crossing of Catherine Creek would be primarily a temporary impact.

73. Mr. Deer states that Northwest provided information that Catherine Creek was a dried out creek-bed and disagrees with its data. To date, all of our data lists Catherine Creek as a perennial stream and none of the information in our record suggests that the stream is dry.

74. Mr. Deer also claims that the flume crossing of Catherine Creek is not feasible. He states that the banks on either side of Catherine Creek are peat. He contends that due to the porous nature of the peat, it is not possible to dam the creek. Mr. Deer also claims that it is not possible to drive heavy equipment on to the wetlands in the Catherine Creek area. In response, we will revise Condition No. 3 in the amended EA and require that Northwest include in its Implementation Plan information that details the feasibility of a flumed crossing of Catherine Creek. We will also require that it include measures it intends to take to reduce impacts associated with vehicle transport across the wetlands associated with Catherine Creek.

75. Mr. Deer also states that a flume crossing of Catherine Creek would seriously impact threatened species. As discussed in section 2.4 in the amended EA and as required by Environmental Condition No. 4, Northwest cannot begin construction of the proposed facilities until it completes the required Endangered Species Act consultation with NMFS and FWS. As such, any impact to threatened species, and appropriate mitigation measures, will be determined prior to the construction of the proposed project.

76. Mr. Deer is also concerned about the damage to the trees on his property and requests that the comment period be held open for an additional sixty days to allow the submission of an arborist report from Northwest. This comment was previously addressed in the October 25 Order.[20] While the construction method has changed from a HDD to an open cut in this area, Northwest has agreed to limit tree removal to those trees that were originally in or adjacent to the construction right-of-way. Additionally, Northwest must submit a site-specific plan for this area before construction begins. Therefore, we do not believe that further study of this concern is needed or that it constitutes a significant adverse impact.

77. Further, Mr. Deer is concerned that the construction of an open cut crossing would seriously endanger his well water. The amended EA addresses impacts to groundwater

[20] See Northwest, 97 FERC at 61,462.

resources and wells and references Northwest's Groundwater Monitoring and Mitigation Plan. Northwest provides procedures for pre- and post-construction water quality testing and water system yield evaluations of wells within 150 feet of the edge of the construction work areas. Northwest would be responsible for repairing or replacing any damaged wells. Condition No. 2 also requires Northwest to provide the Commission with a report on any wells damaged and how they were repaired. We believe that Northwest's Groundwater Monitoring and Mitigation Plan adequately addresses Mr. Deer's concern.

78. On January 12, 2004, Northwest filed a minor realignment of its proposed route to address concerns raised by the proposed pipeline's alignment within the Snohomish River Floodplain Estuary. The proposed realignment addresses issues regarding Snohomish County's proposed estuary restoration plans on Smith Island, as well as the potential for future estuary restoration that may occur on the east side of Ebey Slough. The proposed realignment also addresses previous concerns raised by NMFS, FWS, WDOE, and the City of Everett. The proposed realignment would further minimize impacts to the Snohomish River Floodplain and other environmental resources. Accordingly, we find the proposed modification acceptable.

79. Based on the discussion in the amended EA and in this order, and subject to the conditions listed in the Appendix to this order, we conclude that if the proposed facilities are constructed and operated in accordance with Northwest's amended applications and supplements, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

80. 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 and operation of facilities approved by this Commission.[21]

81. Northwest shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local

[21] See, e.g., Schneidewind v. ANR Pipeline Company, 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

agencies on the same day that such agency notifies Northwest. Northwest shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

82. At a hearing held on February 11, 2004, the Commission, on its own motion, received and made a part of the record, all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) Northwest is issued a certificate of public convenience and necessity under NGA Section 7(c) to construct and operate natural gas facilities, as described and conditioned herein, and as more fully described in the application as amended.

(B) The authorization in Ordering Paragraph (a) is conditioned on Northwest:

(1) placing the proposed facilities in service within one year of the final order;

(2) complying with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs(a), (c), (e), and (f) of Section 157.20 of the Commission's regulations; and

(3) complying with the specific environmental conditions listed in the Appendix of this order.

(C) Northwest’s request for pre-granted abandonment of the lease is denied.

(D) Northwest's request for pre-approval for rolled-in treatment is granted. Northwest may roll-in the costs of this expansion in its first NGA general Section 4 rate case filed after the proposed facilities are placed into service, provided that circumstances have not changed.

(E) Northwest’s request for any necessary waivers to the extent that the provisions of the Lease and O&M Agreements are inconsistent with its tariff is denied.

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

(G) The lease of the pipeline facilities to Northwest for natural gas transmission by itself will not cause Puget to become an natural gas pipeline company within the meaning of NGA Section 2(6).

(H) Northwest's and Puget's answers are accepted into the record.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

Environmental Conditions

In addition to the conditions listed below, Northwest shall comply with the conditions listed in the Appendix to the October 25, 2001 Order issued in Docket No. CP01-49-000.

1. Northwest shall incorporate the staff's January 17, 2003, versions of the Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures in the design for this project.

2. Within 30 days of placing the facilities in service, Northwest shall file a report with the Secretary of the Commission (Secretary) discussing whether any complaints were received concerning well yield or water quality for all private wells within 150 feet of pipeline construction activities, and how each was resolved. Northwest shall identify all potable water supply systems damaged by construction and how they were repaired.

3. Northwest shall file for review and written approval of the Secretary prior to construction, a site-specific plan for the Modified Certificated Route detailing measures that would be taken to:

   a. minimize impacts to forested wetlands (especially mature conifers) associated with this route;
   b. ensure the feasibility of successfully completing a flumed crossing of Catherine Creek in this location; and
   c. reduce impacts associated with vehicle transport across the wetlands associated with Catherine Creek.

   This plan should also be provided to the COE for their comments.

4. Northwest should not begin construction activities until:

   a. the staff receives comments from the FWS and NMFS regarding the proposed action;
   b. the staff completes formal consultation with the FWS and NMFS, if required; and
   c. Northwest has received written notification from the Director of Office of Energy Projects (OEP) that construction or use of mitigation may begin.

5. Northwest shall defer implementation of any treatment plans/measures (including archaeological data recovery); construction; and use of all staging, storage and temporary work areas and new or to-be-improved access roads until:

   Northwest files with the Secretary cultural resources reports and any required treatment plans and the OAHP's comments; and

   The Director of OEP reviews all cultural resources survey reports and plans and notifies Northwest in writing that treatment plans/measures may be implemented or construction may proceed.

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

6. Northwest shall consult with Crescent Capital X, LLC to develop a route on their property adjacent to Soper Hill Road and avoid conflicts to the development of the new residential community. Northwest shall file with the Secretary revised alignment sheets showing the revision of the route for review and written approval from the Director of OEP.

7. Northwest shall incorporate the Modified Certificated Route in place of the proposed route between Mileposts 1.16 and 1.78.