

104 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Paiute Pipeline Company

Docket No. CP03-31-000

ORDER APPROVING CONTESTED SETTLEMENT, ISSUING CERTIFICATE,
AND AUTHORIZING ABANDONMENT

(Issued July 14, 2003)

1. On December 19, 2002, Paiute Pipeline Company (Paiute) filed an application under Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity. Paiute seeks authorization to abandon facilities under NGA Section 7(b) to replace two segments of deteriorating pipeline on its Carson Lateral in Nevada. Additionally, by replacing the deteriorating pipeline with a larger diameter pipeline and by looping another segment of its facilities the proposed facilities would expand Paiute's capacity by 5,868 Dth per day on the Carson Lateral to meet the growth requirements of a local distribution company, Southwest Gas Corporation- Northern Nevada (Southwest-Northern Nevada).¹

2. On April 3, 2003, Paiute filed an Offer of Settlement (Settlement). The Settlement provides agreement with respect to two of the three issues raised in this proceeding. As discussed below, we find that it is in the public interest to approve the contested Settlement and grant the requested authorization, subject to the conditions set forth herein. Paiute's proposal will improve the reliability and safety of Paiute's pipeline system by replacing the deteriorated segments of pipeline. Further, it will provide additional capacity needed to meet the increasing demand of Southwest-Northern Nevada.

¹Southwest-Northern Nevada and Paiute are subsidiaries of Southwest Gas Corporation (Southwest).

I. Background and Proposal

3. Paiute owns and operates an interstate natural gas pipeline system extending from a point of interconnection with the interstate pipeline facilities of Northwest Pipeline Corporation (Northwest) at the Idaho-Nevada border to the Nevada-California state line where Paiute delivers gas into the facilities of local distribution companies. Paiute also interconnects with the interstate pipeline facilities of Tuscarora Gas Transmission Company (Tuscarora) near Wadsworth, Nevada. At Wadsworth, Paiute's system divides into two mainline extensions, the Reno Lateral and the Carson Lateral.

4. Paiute states that over the last several years it has encountered increasing maintenance problems associated with the deterioration of the external coating of its original 10-inch diameter pipeline on the Carson Lateral.² Specifically, it asserts that the coal-tar coating has decayed on this segment such that Paiute has been required to expend greater amounts of money on cathodic protection. Paiute states that it has applied increasing amounts of cathodic protection current to the Carson Lateral to mitigate the deterioration of the coating but anticipates that for certain segments it will be impossible to maintain cathodic protection due to continued deterioration of the coating.

5. Paiute states that it needs to replace two segments of deteriorating pipeline, totaling 6.42 miles, on its Carson Lateral. Additionally, Paiute conducted an open season in early 2002. As part of the open season Paiute solicited turnback capacity from its existing transportation customers. None of its customers chose to relinquish any firm transportation capacity. As a result of the open season, Southwest-Northern Nevada entered into a 10-year firm transportation service agreement with Paiute for 5,868 Dth per day of new capacity.

6. In order to replace the deteriorated pipeline segments and provide the additional transportation capacity for Southwest-Northern Nevada, Paiute requests authority to:

- (a) construct and operate approximately 6.4 miles of new 20-inch diameter pipeline loop between mileposts 9.45 and 15.85 on the Carson Lateral in Lyon County, Nevada (Highway 95A Loop);

²In Docket No. CP99-599-000, the Commission granted Paiute authorization to replace a deteriorated 5.5-mile Section of 10.75-inch diameter pipeline with 20-inch diameter pipeline and to construct additional facilities to add 10,800 Dth of capacity to its existing facilities. Paiute Pipeline Co. (Paiute), 91 FERC ¶ 61,352 (2000).

- (b) construct and operate approximately 8.1 miles of 20-inch diameter replacement pipeline between mileposts 37.34 and 45.34 on the Carson Lateral in Lyon County, Nevada (Highway 50 Replacement);³
- (c) abandon in place approximately 8.0 miles of the original 10-inch diameter pipeline between mileposts 37.34 and 45.34 on the Carson Lateral in Lyon County, Nevada; and
- (d) replace and/or install pressure regulation facilities at the White Sage Pressure Limiting Station in Lyon County, Nevada; the Carson Pressure Limiting Station in Carson City County, Nevada; the CP National Corp. City Gate facilities in Douglas County, Nevada; and the California Check Meter in Washoe County, Nevada.

7. Paiute estimates the total cost of the facilities at \$10,742,000. It estimates that if it had limited this project to the replacement of the deteriorating 10-inch diameter pipeline with a like-sized pipe it would cost \$3,487,000. Paiute requests that the Commission make a pre-determination that it may roll-in the costs attributable to the replacement of the deteriorated pipeline segment in its next NGA Section 4 rate case.

8. Paiute proposes to recover the remainder of the construction costs, \$7,255,000, through an incremental surcharge.⁴ Paiute states that the rate is designed to fully recover the costs attributable to the expansion facilities. Paiute states that the proposed rate treatment both for the replacement facilities and the expansion facilities is consistent with rate treatment approved in Paiute's last expansion in Docket No. CP99-599-000 which also combined the replacement of deteriorated facilities with an expansion.⁵

³The replacement line is approximately 0.1 miles longer than the existing 10-inch diameter pipeline because the replacement line has been routed to avoid areas where development has encroached upon Paiute's right-of-way.

⁴Paiute proposes an incremental rate of approximately \$16.31. Its existing Part 284 rate is \$9.41.

⁵ See supra note 2.

II. Procedural Issues

A. Interventions

9. Notice of Paiute's application was published in the Federal Register on January 6, 2003 (68 Fed. Reg. 68,551). Northern Nevada Industrial Gas Users (Northern Nevada),⁶ Sierra Pacific Power Company (Sierra Pacific), and Southwest filed timely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

10. Avista Corporation (Avista) and Public Service Resources Corporation (Public Service) filed late interventions. Avista's and Resources' untimely motions demonstrate an interest in this proceeding and have shown good cause for seeking to intervene out of time. Further, granting Avista's and Resources' untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, Avista's and Public Service's untimely motions to intervene are granted.

B. Protests, Comments, and Subsequent Actions

1. Answers to Protest and Subsequent Responses to Answers

11. Sierra Pacific and Northern Nevada filed protests to Paiute's application. Public Service filed comments. On February 5, 2003, Southwest filed an answer to Northern Nevada's protest and Paiute filed an answer to Sierra Pacific's and Northern Nevada's protests. On February 18, 2003, Northern Nevada filed a reply in response to Paiute's answer. On March 5, 2003, Paiute filed an answer to Northern Nevada's reply.

⁶Northern Nevada is a group of Nevada industrial natural gas users. Its members include Caesar's Tahoe, CYANCO Co., Eagle-Picher-Minerals, Harrah's Casino Hotel-Lake Tahoe, Harvey's Tahoe Management Co., Lake Tahoe Horizon Casino, Nevada Cement Co., Premier Chemicals, The Ridge Tahoe, United Engine and Machine Co., and Winnemucca Farms, Inc.

⁷18 C.F.R. § 385.214.

12. Although the Commission's procedural rules prohibit answers to protests and answers to answers, we may, for good cause, waive this provision.⁸ The parties have filed numerous layers of responsive pleadings. Some of the filings do not provide any relevant information. We find that Southwest's and Paiute's February 5 answers to the protests provide information that clarifies the issues and aids us in our decision-making. Accordingly, we find good cause to accept those filings. The subsequent filings, including Northern Nevada's February 18 reply and Paiute's March 5 answer to the reply, however, simply reiterate previous arguments and do not provide any new information that clarifies the issues or aids in the Commission's decision making. Therefore, we reject those filings as impermissible answers.

2. Data Request

13. In a letter to Paiute dated February 26, 2003, the Commission's Office of Energy Projects (OEP) requested additional information concerning the proposed project. Paiute filed its response to the data request. On March 28, 2003, Northern Nevada filed a supplement to its protest that addressed Paiute's responses to the data request. On April 14, 2003, Paiute filed an answer to Northern Nevada's supplemental protest, to which Northern Nevada filed an answer on April 17, 2003. We will accept Northern Nevada's supplemental protest and Paiute's April 14 answer because they provide information that clarifies the issues. However, Northern Nevada's April 17 answer to Paiute's answer does not provide any relevant information. Therefore, we will reject that filing as an impermissible answer.

3. Settlement

14. As stated, on April 3, 2003, Paiute filed a Settlement. On April 15, 2003, Public Service, Paiute, and Southwest filed comments in support of the Settlement. Northern Nevada filed comments contesting the Settlement.⁹ Northern Nevada, Paiute, and Southwest filed reply comments. The Settlement, comments, and responses accepted into the record are addressed below.

⁸18 C.F.R. § 385.213(a)(2).

⁹Northern Nevada also filed a letter on April 8, 2003, stating that it intended to file comments by the April 23, 2003 deadline.

C. Request for Technical Conference

15. Northern Nevada requests that the Commission convene a technical conference to explore alternative means of resolving Paiute's cost allocation issue.¹⁰ We find that the record, including the application, responses to data requests, and the accepted pleadings, contains sufficient information and data to make a reasoned decision on the merits approving Paiute's proposal. Thus, no purpose would be served by convening a technical conference.

III. Discussion

16. Since Paiute's proposal involves facilities that have been and will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction, operation, and abandonment of the facilities is subject to the requirements of subsections (b), (c), and (e) of NGA Section 7.

A. Offer of Settlement

17. As stated, on April 3, 2003, Paiute filed the Settlement. Generally, the Settlement resolves the concerns raised by Public Service in its comments and Sierra Pacific's protest. It does not resolve the cost allocation issue raised by Northern Nevada. As such, Northern Nevada contests the settlement and argues that it is not in the public interest.

1. Non-Contested Issues

a. Zonal Rates

18. Public Service contends that Paiute should provide service under a zonal rate structure. Therefore, it requests that the Commission's action in this proceeding be without prejudice to any market participant's right to petition for zonal rates in Paiute's next NGA Section 4 filing. Article 4.5 of the Settlement preserves any party's right to proposed zonal rates in any future Paiute rate case. Public Service supports the settlement. Therefore, we find that Public Service's concern is resolved.

¹⁰See infra Section III.A.2.

b. Actual vs. Estimated Costs

19. In its protest, Sierra Pacific contends that Paiute does not support the \$3,487,000 cost of the replacement pipeline. It argues that on a per mile basis, this amounts to a 50 percent increase over the facilities approved in Docket No. CP99-599-000. Sierra Pacific asserts that in the settlement in Docket No. CP99-599-000, Paiute overestimated the costs of the facilities by over 10 percent. Sierra Pacific claims that costs of the estimated replacement portion of the project in this proceeding are likewise inflated. Sierra Pacific claims that if the estimated cost of the replacement pipeline is overstated and the actual costs of the proposed facilities is lower than the estimate, all of the difference between actual and estimated total costs will be used to reduce the costs allocable to the expansion shipper. As a result, Paiute's existing customers will pay an inflated rolled-in amount.

20. In response, Paiute contends, among other things, that its estimated cost is substantially higher on a per mile basis than the replacement cost approved in Docket No. CP99-599-000 because the topography and other construction obstacles are significantly more difficult for the project proposed here than were encountered with the facilities in Docket No. CP99-599-000. It states that the higher estimated construction costs here are caused, in part, by the fact that Paiute will be constructing pipeline through more difficult, rocky mountainous terrain than in Docket No. CP99-599-000. Paiute asserts that construction in Docket No. CP99-599-000 occurred entirely within relatively flat terrain along Highway 50 with a slope ranging from 0 to 4 percent. It states that there were only three short sections of the project with greater slope. Paiute states that significantly more segments of the current project will be constructed within steeper terrain, with one-third of the construction occurring in an area with an 8 to 15 percent slope.

21. In the Settlement, Paiute proposes to adjust the actual total costs of the replacement and expansion projects up or down to reflect the percentage difference between the actual total project costs and the estimated total project cost of \$10,742,000.¹¹ Sierra Pacific did not file any comments to the proposed settlement. Accordingly, we find that the Settlement's provision for adjustment of the estimated project costs are adequate and appropriate to address Sierra Pacific's concern.

¹¹The Settlement provides that the replacement cost will be that portion of the total project costs equal to the total project cost multiplied by 0.324614. (The 0.324614 multiple is derived from dividing the total estimated replacement cost of \$3,487,000 by the total estimated project cost of \$10,742,000.)

2. Contested Issue

22. Paiute estimated the total cost to construct the proposed facilities at \$10,742,000. It estimated the cost to replace the deteriorated 10.75-inch pipeline facilities in kind, *i.e.*, with a new 10.75-inch diameter pipeline, would be \$3,487,000. It determined the cost of the expansion portion by subtracting the cost of the replacement facilities from the total cost of the facilities, approximately \$7,255,000. Paiute does not change its proposed allocation of costs in its Settlement.

23. Northern Nevada claims that Paiute has priced the expansion capacity below its true cost. Northern Nevada argues that a stand-alone expansion to serve Southwest-Northern Nevada would cost significantly more than the costs that Paiute has allocated to the expansion portion of the proposed project. Thus, it argues that assigning 100 percent of the common costs to existing shippers under the replacement cost allocates all the cost saving economies to the expansion shipper by pricing the expansion capacity substantially below its true cost. Moreover, it argues that Paiute's proposed allocation of all common costs to existing shippers improperly burdens them by requiring them to subsidize the expansion costs.

24. Northern Nevada requests that the Commission reject Paiute's Settlement because it believes that Paiute's proposed cost allocation masks the true costs of the expansion by shifting common costs to existing shippers to the sole benefit of the expansion shipper, which is an affiliate of Paiute.

25. In response, Paiute states that the Commission rejected a similar argument made by Northern Nevada in Docket No. CP99-599-000. Paiute points out that in that proceeding the Commission held that Paiute, not its existing customers, would effectively bear the risk of cost under-recovery for the facilities under the rate proposal. Paiute also states that the Commission rejected Northern Nevada's argument that the pricing method was not consistent with the Policy Statement. It states that the Commission found that the cost of replacing the 10-inch pipeline pipe was properly attributable to system customers even though Paiute installed 20-inch diameter pipe to add capacity at the same time it was replacing the deteriorated pipeline. Paiute asserts that the replacement costs directly and solely benefit system customers. It states that it does not seek to roll into system rates an amount that is greater than the cost of replacing existing facilities.

26. Southwest states that the relevant inquiry is the reasonableness of the cost estimates for replacing the 10.75-inch pipeline with a comparable pipeline. Southwest argues that instead of focusing on the reasonableness of the cost estimate, Northern Nevada would rather have the Commission revisit the rationale in the Docket No. CP99-599-000 proceeding and determine that Paiute should "first estimate the cost of the entire

project, sans any consideration for system benefits, and then deduct some phantom, hypothetically-diminished costs associated with backing out system benefits.”¹²

Commission Response

27. In pipeline replacement/expansion proceedings, including replacements of deteriorating pipelines, the Commission generally approves proposals that allocate the estimated cost of an in-kind replacement pipe to existing customers and the remainder of estimated costs to the incremental expansion shippers.¹³ The replacement portion of the project is designed to replace a deteriorating pipeline facility and to maintain existing system capacity. It will have the beneficial effect of replacing an obsolete pipeline, thus assisting Paiute in maintaining service and increasing reliability for the benefit of its customers. Accordingly, we find it is appropriate for Paiute to allocate those costs to its existing shippers.

28. Here, Northern Nevada argues that the Commission should allocate a portion of the replacement costs to the expansion shipper. We disagree. The Commission has expressly determined in the Policy Statement¹⁴ that replacement facilities provide system benefits and that the costs associated with such replacements should be allocated to the existing shippers. The fact that the expansion facilities may cost less when constructed in conjunction with the replacement facilities does not warrant a finding that the expansion shippers should necessarily contribute more to the replacement portion of the overall project cost.

29. As with all expansion projects, the cost of an expansion project is determined to some extent by the presence of the underlying existing facilities. For example, additional capacity on a pipeline's system may be accomplished by adding additional compression. The fact that the compression relies on an existing pipeline and may be less expensive than constructing a pipeline to loop the existing facility, does not require a finding that the expansion shipper contribute to the cost of the existing pipeline. The same holds true here.

¹²Southwest's February 5 answer, at 4.

¹³See Northwest Pipeline Corp., 98 FERC ¶ 61,352 (2002), National Fuel Gas Supply Corp., 92 FERC ¶ 61,286 (2000), Paiute Pipeline Co., 91 FERC ¶ 61,352 (2000).

¹⁴Certification 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).

30. If the Commission holds the expansion shipper responsible for contributing to the replacement costs simply because the two projects are constructed concurrently the expansion shipper, in essence, would be subsidizing the existing shippers for the replacement facilities. As discussed above, there are economies of scale in all expansion projects depending upon existing facilities. However, the existence of these economies does not dictate that the Commission reevaluate the costs of the underlying existing facilities to allocate a portion of those costs to the expansion project.

31. Further, we note that, absent the need to increase the size of the pipeline to provide additional capacity, Paiute could construct the replacement facilities under Section 2.55 of the Commission's regulations or under its blanket construction certificate. The Policy Statement states that under the blanket certificate procedures both types of projects qualify for a presumption in favor of rolled-in pricing.

3. Conclusion

32. When presented with a settlement, the first issue for the Commission is whether the settlement provides an acceptable outcome for the case that is consistent with the public interests protected by the Commission.¹⁵ The Commission has relied on the usefulness of settlements, both in enabling the Commission to resolve the large number of cases it must process and in allowing the pipeline and its ratepayers to obtain greater rate certainty and to minimize their litigation costs. We find that this settlement provides an acceptable outcome consistent with the public interest. This settlement resolves all but one outstanding issue, the cost allocation issue. As discussed, we find Paiute's proposed allocation of project costs acceptable and consistent with Commission policy.

33. Once the Commission concludes that a particular contested settlement provides an acceptable outcome of a case, the second issue is what type of rationale is available for approving the settlement despite the objections of the contesting party.¹⁶ As explained in

¹⁵Trailblazer Pipeline Co. (Trailblazer), 85 FERC ¶ 61,345, at 62,341 (1998).

¹⁶Under the Commission's procedural regulations, the Commission can approve an uncontested settlement upon a finding that the settlement appears to be fair and reasonable and in the public interest. 18 C.F.R. § 385.602(h) (2001). However, where a settlement is contested, the Supreme Court has held that the Commission must make an "independent finding supported by substantial evidence on the record as a whole, that the proposal will establish just and reasonable rates." *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1984).

Trailblazer,¹⁷ the Commission's approach to considering contested settlements falls into three general categories. First, the Commission can address the contentions of contesting parties on the merits, and if their contentions lack merit the Commission can approve the contested settlement on that ground. Second, the Commission may approve the settlement on the ground that the overall result is just and reasonable. Third, where the Commission has not found that the settlement has satisfied the just and reasonable standard applicable to contested settlements, the Commission has approved a settlement if the contesting party's interest is sufficiently attenuated that the settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements and the Commission makes an independent finding that the settlement benefits the directly affected settling parties. However, if the Commission concludes that it cannot impose the settlement on contesting parties, severance may be an option for approving the settlement for the consenting parties.

34. In this case, we take the first approach and find that Northern Nevada's objections to the settlement lack merit. As stated, in pipeline replacement/expansion proceedings, the Commission generally approves proposals that allocate the estimated cost of an in-kind replacement pipe to existing customers and the remainder of estimated costs to the incremental expansion shippers.¹⁸ Paiute's proposed allocation is consistent with this precedent. Further, as discussed below, we find that Paiute's estimate reasonably represents the costs associated with a hypothetical in-kind replacement. Accordingly, we find Paiute's Settlement is fair and reasonable and in the public interest and is hereby approved.

B. Abandonment

35. The record in the proceeding indicates that the existing 10-inch diameter pipeline is deteriorating. Paiute proposes to abandon this facility in place, but not to abandon the services rendered through this facility. Rather, Paiute would continue to provide such services through the replacement pipeline. Therefore, the proposed abandonment would not impact the services received by the existing customers. In addition, the environmental conditions contained in the Appendix to this order will mitigate any impacts associated with the abandonment of the pipeline in place. Under these circumstances, the Commission concludes that the proposed abandonment is permitted by the public convenience and necessity.

¹⁷Trailblazer, 85 FERC at p. 62,342.

¹⁸See Northwest Pipeline Corp., 98 FERC ¶ 61,352 (2002), National Fuel Gas Supply Corp., 92 FERC ¶ 61,286 (2000), Paiute Pipeline Co., 91 FERC ¶ 61,352 (2000).

36. Paiute proposes to record the abandonment of the 10-inch diameter Carson Lateral Segment being replaced by debiting Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, and crediting Account 101, Gas Plant in Service. Any related costs of removal will be charged to Account 108. This proposed accounting conforms with the requirements of the Commission's Uniform System of Accounts and is hereby approved.

C. Compliance With Certificate Policy Statement

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

38. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the 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. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, and on landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, 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 then proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

39. The Commission's Policy Statement directs that the threshold requirement for pipeline's proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. As stated,

Paiute proposes to roll the estimated costs associated with the construction and operation of a replacement pipeline into its existing rates in its next NGA Section 4 rate proceeding. It also proposes to charge an incremental rate for the additional capacity created by the use of a larger diameter pipeline.

40. The Policy Statement provides that the cost of new and/or replacement facilities designed to maintain and improve existing service and enhance system reliability and flexibility for the benefit of all customers is not considered a subsidy and is therefore appropriately rolled-in to a pipeline's rates.¹⁹ The replacement portion of the project is designed to replace a deteriorating pipeline facility and to maintain existing system capacity. It will have the beneficial effect of replacing an obsolete pipeline, thus assisting Paiute in maintaining service and increasing reliability for the benefit of its customers. As discussed below, we find Paiute's estimated costs for the in-kind replacement facilities reasonable and consistent with Commission policy. Since Paiute is not proposing to abandon any current services, but rather only to provide such service through the replacement pipeline, the rates applicable to such services would remain the same until such time costs are rolled-in under the next Section 4 rate case. Accordingly, we find that the estimated in-kind replacement cost is not considered a subsidy under the Commission's Policy Statement.

41. Where a pipeline proposes to charge an incremental rate for new construction to provide service for expansion shippers, the evidence indicates that the project will not be subsidized by existing shippers.²⁰ Paiute proposes an incremental surcharge to cover the remaining costs over the estimated costs for the replacement facilities. By proposing incremental pricing for the facilities to serve the expansion shipper, Paiute agrees to accept the risk of any under recovery of revenues. Thus, the threshold requirement of no subsidization has been met.

2. Benefits and Impact

42. Paiute's proposed project will replace a potentially dangerous deteriorating pipeline and provide additional capacity that is necessary to meet the increased demand in Carson City, Lake Tahoe area, and other communities in northwestern Nevada. Paiute is

¹⁹90 FERC at 61,393-94. See also Texas Eastern Transmission Corporation, 95 FERC ¶ 62,031 (2000), Columbia Gulf Transmission Co., 93 FERC ¶ 62,156 (2000), Texas Gas Transmission Corp., 90 FERC ¶ 62,190 (2000).

²⁰See Natural Gas Pipeline Co. of Am., 101 FERC ¶ 61,125, at 61,514 (2002); Transcontinental Gas Pipe Line Corp., 100 FERC ¶ 61,311, at 62,389 (2002); CMS Trunkline LNG Co., LLC, 100 FERC ¶ 61,217, at 61,755 (2002)>.

also proposing to serve new load not currently served by another pipeline. Therefore, the project will not impact any existing pipeline or its customers.

43. Paiute states that in addition to the benefits obtained by replacing the deteriorated pipeline, the project provides other benefits to its existing system customers. Specifically, Paiute contends that the additional capacity of 5,868 Dth/day, while meeting increased contract demands downstream of the Wadsworth Junction, also will be used by system customers through increased secondary delivery point flexibility and increased ability to transport volumes through capacity release and interruptible transportation. Paiute asserts that most of its firm shippers, including Northern Nevada's members, have used Paiute's transportation flexibility, either in primary or capacity release transactions, by designating delivery points located downstream from their primary points.

44. Paiute also states that the additional capacity from the new looping between milepost 9.45 and 15.85 on the Carson Lateral will minimize the risk of service interruptions to all shippers served by the Carson Lateral and assist Paiute in performing maintenance on this portion of the mainline without interrupting service, thereby increasing reliability. Additionally, to minimize landowner and community impacts, Paiute states that, to the extent practical, the rights of way for the proposed project will parallel and overlap Paiute's existing right of way or follow roadway or other utility corridors. Further, Paiute states that it has obtained, or expects to obtain through negotiations, approximately 97 percent of the easements for the proposed project.

45. While Northern Nevada suggests that the replacement may not be necessary, Paiute states that it has determined that the existing coal tar wrap originally applied in 1963 to the deteriorated pipeline segments is disbonding. It states that the disbonding is not limited to discrete points, but is extensive along the entire line segments. As Paiute asserts, when this kind of extensive pipeline wrap disbonding occurs, there is increased potential of pipeline corrosion and, as a consequence, a higher risk of a safety-related pipeline incident. The line involved is 40 years old. Although Northern Nevada suggests that repair might be feasible, we find that Paiute has reached a reasonable conclusion based upon the age of the line, the extensive degeneration of the wrap, and the corrosion and safety hazard, that replacement, rather than repair, of these line segments is necessary.

3. Project Need and Certificate Policy Statement Conclusion

46. As stated, Paiute's project can proceed without subsidies. Further, the Commission finds Paiute's project will provide many benefits including increased flexibility and reliability that outweigh any potential adverse impacts. Therefore, consistent with the

Policy Statement and NGA Section 7, we find approval of the Paiute's proposal to be in the public convenience and necessity.

D. Rate Issues

1. Rolled-in Rate Treatment

47. As stated, Paiute estimates that if it replaced the deteriorating 10.75-inch pipeline with a like-sized pipeline, the replacement portion of its project would cost approximately \$3,487,000. Paiute states that this estimated cost is supported by independent third-party estimates for a substantial portion of the estimated costs. Paiute contends that it estimated the cost of the land and land rights based upon past experience with right-of-way purchases in the same geographic area. It states that it estimated materials and related materials costs based upon quotes and estimates received from a pipe manufacturer for a substantial portion of the total material costs.

48. Paiute also asserts that it estimated company installation labor cost based upon its historical experience. It states that the contractor installation costs consists entirely of an estimate received by Paiute from an experienced, independent contractor. Paiute states that the contractor drove the entire length of the proposed project before providing the estimate.

49. Paiute states that the estimated engineering and environmental costs are based upon a combination of actual bids received by Paiute consultants and Paiute's experience. It states that it estimated inspection costs based upon radiology costs from past experience. Paiute states that it also included estimated administrative, general and overhead expenses based upon historical percentages.

50. Paiute asserts that of the \$3,487,000 cost of replacing the existing, deteriorating pipeline segments with same-size pipe, \$2,298,000 is based on independent, third-party estimates. The remaining costs represent reasonable cost estimates by Paiute based on its historical experience.

51. We find that Paiute has provided sufficient information in the form of both historical and cost estimates to determine that Paiute's estimated cost of replacing the deteriorating 10.75-inch pipeline with same-size pipe is reasonable. Accordingly, in its next rate case, Paiute will be allowed to roll-in \$3,487,000, as adjusted, based upon the percentage difference between the actual total project costs and the estimated total project costs which are set forth in the application, supplements, and Settlement. Our approval is conditioned on there being no material changes in the relevant facts and circumstances associated with the project at the time Paiute proposes to roll-in the subject costs.

2. Incremental Rate

52. Paiute proposes and the Settlement provides that the remaining actual costs of construction will be recovered by Paiute by means of an incremental facilities surcharge to be assessed to Southwest-Northern Nevada under Paiute's Rate Schedule FT-1. The design of the surcharge is shown in Exhibit N of Paiute's application in this proceeding, along with an illustration of the initial incremental facilities surcharge based upon the estimated cost of the facilities and the estimated replacement costs. The incremental facilities surcharge will consist of a monthly reservation charge, which will be based upon all fixed costs, utilizing a billing determinant of 5,868 Dth/day. We find that the incremental rate developed for the expansion portion of the project is designed to fully recover the cost associated with expansion facilities and is acceptable.

E. Design Capacity and Operating Conditions

53. In NGA Section 7(c) cases, the Commission will review and approve the design capacity of a project. We conclude that the facilities proposed by Paiute in its application are properly designed to replace the deteriorated pipe and to provide the incremental 5,868 Dth per day of capacity for Southwest-Northern Nevada.

F. Environment

54. On January 27, 2003, a Notice of Intent to Prepare an Environmental Assessment for the Proposed Carson Lateral Replacement Project And Request for Comments on Environmental Issues (NOI) was issued. Responses to the NOI were received from the U.S. Fish and Wildlife Service and the Nevada Division of Water Resources. All substantive comments were addressed in the environmental assessment (EA) prepared by Commission staff.

55. The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, federally listed threatened and endangered species, cultural resources, land use, air quality, noise, and alternatives. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with Paiute's application and supplements and the environmental conditions set for in the Appendix, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

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

G. Conclusion

57. For all of the above reasons, the Commission finds that the Paiute's proposed facilities are required by the public convenience and necessity and that a certificate authorizing the construction and operation of the proposed facilities and authority to abandon the deteriorating facilities being replaced should be issued, subject to the conditions discussed herein.

58. At a hearing held on July 9, 2003, the Commission, on its own motion, received and made a part of the record all evidence, including the applications, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

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

(B) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

- (1) Paiute's completing the proposed facilities and making them available for service within one year of issuance of this

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

order, under paragraph (b) of Section 157.20 of the Commission's regulations;

(2) Paiute's complying with all applicable Commission regulations under the NGA, including paragraphs (a), (c), (e), and (f) of Section 157.20 of the Commission's regulations;

(3) Paiute's compliance with the specific environmental conditions listed in the Appendix to this order.

(C) Paiute is granted permission and approval under NGA Section 7(b) to abandon in place the subject facilities described in this order.

(D) Paiute shall notify the Commission within 10 days of the date of abandonment of the subject facilities.

(E) Paiute's Settlement is fair and reasonable and in the public interest and is hereby approved.

(F) Paiute 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 Paiute.

(G) The motions for leave to file answers are granted or denied as discussed in this order.

(H) Avista's and Public Service's untimely motions to intervene are granted.

(I) Northern Nevada's request for a technical conference is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Paiute shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Paiute must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Paiute shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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**, Paiute shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins**, Paiute shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Paiute will implement the mitigation measures required by this Order. Paiute must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Paiute 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;
- b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. what training and instructions Paiute will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of Paiute's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Paiute will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Paiute shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this 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 this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Paiute shall file updated status reports prepared by the head environmental inspector with the Secretary on a **biweekly** basis **until** all construction-related

activities, including restoration and initial permanent seeding, 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. the current 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;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Paiute from other Federal, state or local permitting agencies concerning instances of noncompliance, and Williams' response.
9. Paiute must receive written authorization from the Director of OEP **before commencing service** for the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Paiute shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Paiute has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Paiute shall defer implementation of any treatment plans/measures (including archaeological data recovery) and defer construction and use of facilities and

staging, storage, and temporary work areas and new or to be improved access roads associated with the Highway 50 Replacement **until**:

- a. Paiute files with the Secretary any required additional cultural resources reports or avoidance or treatment plans, as appropriate, and files the comments of the Nevada State Historic Preservation Office and the U.S. Bureau of Land Management (Carson City Field Office) on those reports or plans;
- b. the Advisory Council on Historic Preservation has been provided an opportunity to comment on the undertaking if any historic properties would be adversely affected; and
- c. the Director of OEP reviews and approves all reports and plans and notifies Paiute in writing that the treatment plans/measures may be implemented or construction may proceed.

Note: For additional information see OEP's "Guidelines for Reporting on Cultural Resource Investigations" (December, 2002).

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.**"