UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Interstate Gas Transmission LLC Docket No. CP03-39-000

ORDER ISSUING CERTIFICATE

(Issued September 11, 2003)

1. On January 16, 2003, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to construct and operate certain facilities necessary to develop its proposed Cheyenne Market Center (CMC) and to commence a new service (CMC Service) that will allow for the receipt, storage, and subsequent re-delivery of natural gas supplies near the Cheyenne Hub in Weld County, Colorado and Kinder Morgan's existing Huntsman Storage Facility in Cheyenne County, Nebraska.

2. As discussed below, the Commission finds that the proposed project is required by the public convenience and necessity since the proposed facilities and services address the needs of shippers in the Rocky Mountain region and provide them with additional flexibility to manage and store gas supplies.

I. Background

3. Kinder Morgan is a natural gas company subject to the Commission's jurisdiction that provides transportation, exchange, and storage of natural gas services in Colorado, Kansas, Missouri, Nebraska, and Wyoming. Kinder Morgan is connected to supplies of natural gas from the Hugoton, Bradshaw, and Unruh areas in Kansas; the Denver-Julesburg Basin in Colorado; the Wind River and Powder River Basins in Wyoming; and to various interstate and intrastate pipelines in Colorado, Kansas, Missouri, Nebraska, and Wyoming.

4. Kinder Morgan also owns and operates the Huntsman Storage Facility, an underground natural gas storage facility located in Cheyenne County, Nebraska. Kinder Morgan currently uses the storage facility to provide firm and interruptible storage services and for system management. The storage facility is comprised of the Huntsman and the West Engelland Fields in which are located, respectively, the Huntsman Compressor Station and the West Engelland Compressor Station. There are five

compressor units in the Huntsman station with a total of 3,760 horsepower (hp); there is one 140 hp compressor unit in the West Engelland station. The Huntsman Storage Facility has 18 injection/withdrawal wells, 22 observation wells, and approximately eight miles of 2 to 12-inch field storage pipeline. The certificated maximum storage inventory of the storage facility is 39,468,957 Mcf of natural gas at 14.73 psia and 60 degrees Fahrenheit; the maximum shut-in bottom-hole pressure is 1,050 psia.

5. Kinder Morgan conducted an initial open season to solicit commitments for new firm service through the proposed Cheyenne Market Center facilities from April 29 through May 13, 2002, and a supplemental open season from December 6 through December 12, 2002.[1] Colorado Springs Utilities (Colorado Springs), e' prime, Inc. (e' prime), and Western Gas Resources, Inc. (WGR) have executed precedent agreements with Kinder Morgan for all of the proposed capacity for 10-year primary terms.

II. Proposal

6. Kinder Morgan proposes to construct incremental storage capacity of up to 6 Bcf at its Huntsman Storage Facility by converting 2.5 Bcf of currently available interruptible working gas capacity and 3.5 Bcf of cushion gas to firm cycled working gas capacity with approximately 41 MMcf/d of additional associated injection capability and 68 MMcf/d of additional associated withdrawal deliverability. Kinder Morgan proposes to increase its certificated maximum withdrawal rate from 101 MMcf/d to 169 MMcf/d and its maximum injection rate from 60 MMcf/d to 101 MMcf/d. It does not propose to increase its certificated maximum storage inventory of 39,468,957 Mcf or its maximum shut-in bottom-hole pressure of 1050 psia. These facilities will be incremental to and separate from Kinder Morgan's existing transportation and storage facilities.

A. Facilities

7. Kinder Morgan proposes to construct and operate the following facilities:

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[1]Kinder Morgan held a second open season because its initial open season, which only solicited negotiated fixed rate bids, preceded the Commission's decision requiring that a pipeline soliciting negotiated fixed rate bids in an open season must also provide the option of recourse rate bids. (Natural Gas Pipeline Co. of America, 101 FERC ¶ 61,125 (2002)).

Compressor Facilities

a. Huntsman Compressor Station Addition - Cheyenne County, Nebraska - install two 3,550 horsepower compressor units.

b. Rockport (Cheyenne Hub) Compressor Station Addition - Weld County, Colorado - install two 1,680 horsepower compressor units.

c. Kimball Junction Interconnect - Kimball County, Nebraska - install two 1,151 horsepower compressor units.

Injection/Withdrawal Wells

a. Huntsman Storage Facility in Cheyenne County, Nebraska
Develop ten new injection/withdrawal wells.

Storage Field Facilities

a. Install approximately 1,900 feet of new high-pressure 12-inch pipeline originating at the proposed multiple wellhead site and terminating at the existing Huntsman Station inlet header facilities all in Section 12, Township 14 North, Range 50 West in Cheyenne County, Nebraska.

b. Install approximately 1,800 feet of new 8-inch pipeline originating at the proposed multiple wellhead site and terminating at the existing 8-inch road crossing at the Huntsman Station inlet header facilities, all located in Section 7, Township 14 North, Range 49 West in Cheyenne County, Nebraska.

c. Modify facilities within the existing Huntsman Compressor Station including a central injection meter and a central withdrawal meter which will be in addition to the existing master injection and withdrawal meters.

8. Kinder Morgan states that it will also construct and operate facilities pursuant to Section 2.55(a) of the Commission's regulations. These facilities include computer-based station supervisory control systems at the Huntsville Compressor Station; a check meter and bi-directional flow control assembly at the Kimball Junction Interconnect; a control valve at the Kinder Morgan/Colorado Interstate Gas Company Measurement Station in Weld County, Colorado; pigging and gas cleaning facilities; and an office building at the Rockport Compressor Station.

9. Kinder Morgan estimates that the construction costs will be $26,905,570 for the facilities proposed in this proceeding, including overhead and contingencies, and an additional $1,489,350 for the Section 2.55 facilities.

B. Services

10. Kinder Morgan proposes to provide new services under proposed Rate Schedules CMC-1 and CMC-2. Pursuant to those rate schedules a shipper can receive gas at the applicable CMC receipt point(s); store gas in the Huntsman Storage Facility up to the maximum storage volumes set forth in its service agreement; and re-deliver its gas to the applicable CMC delivery point(s) on a uniform hourly basis. The one difference between the two rate schedules is that, pursuant to Rate Schedule CMC-2, a shipper may take two out-of-cycle intra-day nominations per day in addition to the intra-day nominations permitted to all shippers under Section 3 of the General Terms and Conditions of Kinder Morgan's tariff.

11. Rate Schedules CMC-1 and CMC-2 will be available to any customer that requests firm CMC service and executes a CMC service agreement. Kinder Morgan states that it is not obligated to provide CMC service if capacity is unavailable or if construction, acquisition, modification or expansion of facilities would be required.

12. Kinder Morgan states that shippers may use the proposed rate schedules in conjunction with a separate transportation agreement under which they nominate a receipt from, or delivery to, a defined point together with a nomination to use CMC service. Kinder Morgan proposes to post on its website the CMC receipt and delivery points both for CMC service and capacity release of CMC service and its CMC Master Point List (MPL). Any MPL point that a shipper does not select as a primary point shall be available to the shipper, or replacement shipper, as a secondary receipt or delivery point, as applicable.

C. Rates

13. Kinder Morgan proposes to offer CMC Service at negotiated rates and at incremental recourse rates under proposed Rate Schedules CMC-1 and CMC-2. Kinder Morgan proposes maximum reservation charges of $0.8528 per Dth under Rate Schedule CMC-1 and $0.8981 per Dth under Rate Schedule CMC-2. Kinder Morgan proposes for both rate schedules a maximum commodity injection charge of $0.0097 per Dth and a maximum commodity withdrawal charge of $0.0097 per Dth.

14. The three CMC shippers have elected to pay negotiated fixed rates. Colorado Springs and WGR have elected to receive service under Rate Schedule CMC-2; e' prime has elected to receive service under Rate Schedule CMC-1. Pursuant to Section 388.112

of the Commission's regulations, Kinder Morgan requests confidential treatment of its precedent agreements with the three shippers that it filed with its application.

III. Interventions

15. Notice of Kinder Morgan's application in this proceeding was published in the Federal Register on February 3, 2003 (68 Fed. Reg. 5278). Six parties[2] filed timely motions to intervene.[3] Hastings Utilities, Missouri Gas Energy, a Division of Southern Union Company, and Union Oil Company of California filed late motions to intervene. Their late motions have demonstrated an interest in this proceeding and have shown good cause for seeking to intervene out of time. Further, granting the late motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the late motions to intervene.

16. The three shippers that have executed precedent agreements with Kinder Morgan, Colorado Springs, e' prime, and WGR, support the application and request the Commission to authorize the proposed facilities and the implementation of proposed Rate Schedules CMC-1 and CMC-2. They submit that the CMC services will provide new natural gas supply management options that should assist them in moderating the current price volatility that is caused by the temperature sensitive nature of the local gas market and substantial increases in Rocky Mountain production that have not been matched by increases in takeaway capacity.

IV. Discussion

17. Since the proposed facilities and services will be used for the transportation of natural gas in interstate commerce, the construction and operation of the facilities are subject to the jurisdiction of the Commission and to the requirements of NGA subsections 7(c) and (e).

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[2]Colorado Interstate Gas Co., Colorado Springs, e' prime, Inc., Questar Pipeline Co., WGR, and Wyoming Interstate Co., Ltd. ChevronTexaco Exploration & Production Co., a division of Chevron U.S.A. Inc. also filed a motion to intervene and comments but subsequently withdrew its motion.

[3]Timely notices of intervention and motions to intervene are granted by operation of Rule 214 of the Commission's regulations. (18 C.F.R. §385.214 (2002)).

A. Public Convenience and Necessity

18. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[4] 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

19. 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.

20. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, 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**.**

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[4] Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 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).

1. Subsidization

21. The Commission's Policy Statement directs that the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. Kinder Morgan proposes an incremental recourse rate for services on the proposed facilities. Thus existing customers are insulated from contributing to the project's costs. Our analysis of the application shows that Kinder Morgan supports the project financially without relying on subsidization from existing customers. Therefore, Kinder Morgan's proposal satisfies the Policy Statement's threshold requirement.

2. Effect on Other Constituent Groups

22. The Commission finds that Kinder Morgan's proposed facilities should have no adverse impact on existing pipelines in Kinder Morgan's market or on those pipelines' captive customers. The gas transported over the proposed capacity represents incremental requirements of the project shippers and thus the proposed service will not replace any existing service provided by another pipeline.

23. The only adverse impact from this project may be on affected landowners in the event that Kinder Morgan is unable to negotiate necessary easements and must exercise eminent domain. The record demonstrates that Kinder Morgan has taken steps to mitigate adverse economic impacts on landowners. It has demonstrated need for the project since it has executed precedent agreements for all of the proposed capacity for ten-year terms. In addition, Kinder Morgan has designed the facilities so that almost all of the proposed facilities will be installed entirely within or immediately adjacent to existing pipeline rights-of-way and existing compressor station yards thus greatly limiting the number of landowners potentially subject to eminent domain. The Commission received no comments from such landowners with respect to this proposal.[5] Finally, any certificate issued to Kinder Morgan in this proceeding will include all mitigation measures found appropriate by the Commission in its environmental review of the proposal. For these reasons, we find that any potential adverse impact on landowners is

[5]The Commission received comments from three landowners whose properties are located within the boundaries of the Huntsman Storage Field but whose land is not required for the proposed facilities.

outweighed by the demonstrated public benefits of and the need for the project, which are discussed below.

3. Project Need and Certificate Policy Statement Conclusion

24. Due to the increase in production out of the Wyoming basin without a corresponding increase in pipeline takeaway capacity and significant price volatility at the Cheyenne Hub due to rapid changes in weather conditions, shippers in the region need a greater ability to manage their supply portfolios. By increasing storage capacity by up to 6 Bcf with approximately 40 MMcf/d of additional injection capability and 68 MMcf/d of additional withdrawal deliverability, Kinder Morgan's proposed Cheyenne Market Center's facilities and services address these market needs by providing customers with additional abilities to store gas and use receipt and delivery points on short notice. Kinder Morgan's services will fulfill an immediate market need as evidenced by long-term precedent agreements for 100 percent of its design capacity.

25. The Commission finds that Kinder Morgan's proposal will provide substantial benefits, can proceed without subsidies, and will not adversely affect or degrade service to Kinder Morgan's existing shippers. We find that the benefits of the project outweigh any potential adverse impacts. Therefore, the proposal is consistent with the Certificate Policy Statement and Section 7(c) of the NGA. Accordingly, balancing the factors set forth in the Policy Statement, we conclude that Kinder Morgan's proposed project is required by the public convenience and necessity.

C. Rates

26. Kinder Morgan proposes to offer incremental storage services under Rate Schedules CMC-1 and CMC-2 on an open access, non-discriminatory basis pursuant to Part 284 of the Commission’s regulations, with services available at both recourse and negotiated rates. Kinder Morgan will provide these services through its new Cheyenne Market Center facilities (CMC Facilities) which will allow for the injection, storage and withdrawal of natural gas supplies received and delivered at the Cheyenne Hub, a market center located in Weld County, Colorado where several interstate natural gas pipelines interconnect with Kinder Morgan’s facilities. Kinder Morgan’s services will offer incremental storage capacity for up to 6 Bcf, with an associated injection capability of approximately 41 MMcf/d and an associated withdrawal deliverability of approximately 68 MMcf/d. The proposed tariff includes the General Terms and Conditions (GT&C) that will govern the incremental storage services and the pro forma service agreements that respectively incorporate the provisions under Rate Schedules CMC-1 and CMC-2, which are virtually identical with one exception. The single difference is that shippers who elect Rate Schedule CMC-2 may make two out-of-cycle (OOC) intra-day nominations per day in addition to the intra-day nominations permitted to all shippers.

27. We note that Article XII of Kinder Morgan's form of service agreements under both Rate Schedules CMC-1 and CMC-2 provide that shippers cannot separately release any component of service provided under the CMC rate schedules. We find that this is at odds with our requirement under Section 284.8 of the Commission's regulations that shippers must be able to release their capacity without restriction on the terms or conditions of the release. Therefore, Kinder Morgan must remove this restriction from its Rate Schedules CMC-1 and CMC-2.

28. Further, Article III of the service agreements under Rate Schedules CMC-1 and CMC-2 prohibit segmentation of capacity. However, Section 284.7(d) of the Commission's regulations requires pipelines to permit shippers to use their contracted firm capacity by segmenting that capacity into separate parts for their own use or for releasing segmented capacity to replacement shippers to the extent such segmentation is operationally feasible. Kinder Morgan has provided no justification for prohibiting segmentation of capacity under this service. Therefore, we will require Kinder Morgan to either provide evidence demonstrating that segmentation of capacity under the service is not operationally feasible or remove the prohibition from its service agreements.

29. Kinder Morgan's proposed CMC services are bundled transportation/storage services and the rates reflect the bundled nature of the service. Because unbundled rates are preferred, we will reject the proposed bundled rate.[6] We will require Kinder Morgan to separately state the rates for the transportation and storage components of the CMC services.

30. Kinder Morgan does not propose to offer interruptible CMC service. However, Kinder Morgan must provide interruptible transportation (IT) and interruptible storage service (ISS) over the proposed facilities in the same manner as it is required to provide IT or ISS services over its mainline and storage facilities.

31. We note that in Section 5.8 of both the CMC-1 and CMC-2 rate schedules, the shipper would reimburse Kinder Morgan for Fuel, Loss and Unaccounted for gas at the maximum rate set forth in its tariff unless otherwise agreed to in writing by transporter. Pursuant to our policy regarding fuel and unaccounted for rates, these rates cannot be discounted for recourse service under the tariff. Thus, Kinder Morgan and a prospective

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[6] Pipelines are permitted to offer several services under a single rate schedule. However, each service must have a separately stated rate. See, e.g. , Cove Point LNG Partnership, et al., 68 FERC ¶ 61,377 (1994); CNG Transmission Corp., 67 FERC ¶ 61,349 (1994)

recourse shipper cannot agree to pay a fuel rate other than the maximum rate in the tariff. As a consequence Kinder Morgan must remove this aspect of Section 5.8 from both its proposed rate schedules.

Recourse Rates

32. Kinder Morgan’s proposal shows a maximum reservation charge of $0.8528 per Dth under Rate Schedule CMC-1 and $0.8981 per Dth under Rate Schedule CMC-2, with injection and withdrawal charges of $0.0097 per Dth applicable under both rate schedules. Shippers will pay the Fuel and Lost and Unaccounted for Gas (FL&U) charges, estimated to be 3.2%, or 1.2% when shippers use the CMC Service with another transportation service agreement that has Huntsman Storage Facilities as a delivery point.

33. Kinder Morgan’s proposed recourse rate structure reflects a straight-fixed variable (SFV) rate design methodology and an incremental cost-of-service. Kinder Morgan determined its recourse rate demand billing determinants assuming full subscription of the service.[7] Kinder Morgan designed the rates to recover all of the proposed annual cost of service of $5,322,078 using annualized demand billing determinants of 18,000,000 Dth – 6,000,000 Dth for reservation rates designed to collect all fixed costs and 12,000,000 Dth total for injection and withdrawal rates designed to collect all variable costs. This amount includes reservation volumes and withdrawal and injection commodity volumes. Commission policy generally requires that storage rates be designed using the Equitable method which assigns one-half of the fixed costs to the capacity component and the other half to the deliverability component to take into account different proportions between capacity rights and deliverability rights among storage customers.[8] Accordingly, we will require Kinder Morgan to redesign its proposed rates using the Equitable method.

34. The proposed $5,322,078 annual cost of service comprises (1) total operating expenses of $595,090, based upon expected operations; (2) depreciation expenses of $802,759, using an annual depreciation accrual rate of 2.5% applied to transmission and 3.0% applied to storage; (3) a return allowance of $3,352,761 calculated based on a pre-tax rate of return of 13.71 percent, and (4) taxes other than federal and state income taxes totaling $571,468.

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[7] Kinder Morgan's rate calculation does not reflect a discount adjustment.

[8] Equitable Gas Co., 36 FERC ¶ 61,147 (1986).

35. Kinder Morgan proposes a first year gross plant investment of $28,394,920 less an accumulated depreciation expense of $401,379[9] and accumulated deferred income taxes of $3,538,681, based on the blended tax rate of 38.84 percent, resulting in a total rate base of $24,454,860. Kinder Morgan states that it will finance the cost of the proposed CMC Facilities through short-term loans and funds on hand. Our analysis of the application shows that Kinder Morgan supports the project financially without relying on subsidization from existing customers. Kinder Morgan's application shows the proposed incremental recourse reservation rates are designed to recover the cost of the project. Because existing storage rates remain unchanged, the existing customers will bear no costs associated with Kinder Morgan's expanding storage services. Accordingly, the Commission accepts Kinder Morgan's proposed recourse rates as modified alone.

36. The Commission directs Kinder Morgan to file actual tariff sheets for the CMC-1 and CMC-2 services 60 days prior to placing the CMC Facilities in service consistent with the discussion herein.

Negotiated Rates

37. Kinder Morgan states that the three winning bidders in its open season elected to pay negotiated fixed rates.[10] Kinder Morgan filed executed precedent agreements with the three shippers for 100 percent of the firm incremental CMC capacity with ten-year primary terms. Kinder Morgan requests confidential treatment of these precedent agreements. Commission precedent provides for the confidential treatment of negotiated rate precedent agreements in certificate cases.[11] However, we note that if Kinder Morgan executes negotiated rate service agreements for the proposed CMC services, it must file either the contracts or numbered tariff sheets not less than 30 and not more than 60 days prior to the commencement of service on the expansion facilities consistent with the

[9] Reflects the average plant balance for the year multiplied by the applicable depreciation rate.

[10] The Commission authorized Kinder Morgan to offer negotiated rates in Docket No. RP97-81-000. <u>See</u> KN Interstate Gas Transmission Co., 77 FERC ¶ 61,350 (1996), <u>reh'g</u>, 81 FERC ¶ 61,221 (1997)(Kinder Morgan was formerly known as KN Interstate Gas Transmission Co.).

[11] <u>See</u> Williston Basin Interstate Pipeline Co., 103 FERC ¶ 61,269 at P 9 (2003).

Alternative Rate Policy Statement[12] and the Commission's decision in NorAm Gas Transmission Company.[13] This filing does not receive confidential treatment since full disclosure of negotiated rates is necessary to allow the Commission and the public to monitor negotiated rate programs to ensure against instances of undue discrimination.[14] Disclosure also permits shippers that believe they are similarly situated with respect to a particular negotiated rate customer to make such a determination.

38. If Kinder Morgan elects to file tariff sheets rather than the executed service agreements, the tariff filing must state for each shipper the negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any material aspect from the form of service agreement in Kinder Morgan's FERC Gas Tariff.

39. We find that Kinder Morgan's negotiated rate proposal conforms with the guidelines for negotiated rates as articulated in the Commission's Alternative Rate Policy Statement. Under that Policy Statement, as affirmed by the Commission in NorAm, any revenue shortfall due to negotiated rates lower than recourse rates cannot be recovered from existing shippers. In addition, Kinder Morgan's negotiated rate authority is subject to the Commission's policy regarding protecting the recourse rate-paying shippers against inappropriate cost shifting with negotiated rates and discount adjustments and what deviations are permitted as part of a negotiated rate agreement. Kinder Morgan must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Kinder Morgan must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be

[12] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996); reh'g and clarification denied, 75 FERC ¶ 61,024 (1996); reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

[13] NorAm Gas Transmission Company (NorAm), 77 FERC ¶ 61,011 (1996).

[14] Id. at p. 61,038.

identified in Statements G, I and J in any future NGA Section 4 or 5 rate cases.

40. If any negotiated rate contract signed under the CMC rate schedules deviates from the form of service agreement to include Additional Service Attributes or deviates for any other reason, Kinder Morgan must file any such negotiated rate service agreements for our approval before they can become effective.

41. Finally, we note that Kinder Morgan's negotiated rate proposal conforms with the Commission's Policy Statement in Docket No. PL02-6-000.[15]

D. Engineering Analysis

42. Engineering staff performed a detailed analysis of the data submitted in Kinder Morgan's application and data response and has determined that the addition of the six proposed compressor units raises no engineering issues for the pipeline system. Unlike Kinder Morgan's existing system which relies on displacement to meet contract requirements, the proposed project is designed so that deliveries will occur without utilizing displacement and without adverse impacts on existing shippers.

43. The certificated levels for the Huntsman Storage Field shall be as follows: maximum working gas capacity of 15,974 MMcf and cushion gas capacity is 23,495 MMcf, for a total certificated capacity of 39,469 MMcf at 14.73 psia and 60 degrees Fahrenheit. The peak day deliverability shall increase to 169 MMcf/d, the injection rate shall increase to101 MMcf/d, and the maximum bottom hole pressure shall not exceed 1,050 psia.

V. Environmental Analysis

44. On March 26, 2003, we issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Cheyenne Market Center Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from three landowners affected by the proposed project.

45. On August 5, 2003, the Commission issued the EA which addresses the substantive comments received on the NOI. The EA also addresses geology and soils;

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[15] Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003).

surface water, wetlands, and groundwater resources; vegetation and wildlife; threatened and endangered species; land use; socioeconomics; cultural resources; air quality; noise quality; and alternatives.

46. The deadline for filing comments on the EA was August 30, 2003. The U.S. Department of the Interior, Office of Environmental Policy and Compliance, Denver Regional Office commented that certain types of information about the proposed wells, geologic formations, and impacts of the new wells on groundwater should be included in the document.

47. The new injection/withdrawal wells would be drilled with 9-5/8-inch surface casing set at 5,500 to 6,000 feet (measured depth) or 4,950 feet (true horizontal depth) cemented to abut 3,500 feet (true horizontal depth). The main groundwater withdrawal aquifers are identified in the Water Resources, Groundwater section of the EA beginning on page 11. The following should be included: [f]luvial and alluvial deposits generally form the Surficial aquifer system which are characterized by unconsolidated sands and gravels. The High Plains aquifer includes the Brule, Arikaree, and Ogallala formations, unconsolidated gravel, volcanic ash, and clay. Additions at the Huntsman Storage Facility, which includes the 10 injection/withdrawal wells, would not result in any significant adverse impacts on groundwater quality and quantity.

48. Based on the discussion in the EA, we conclude that if constructed in accordance with Kinder Morgan's application and supplements filed April 16 and 30, 2003, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

49. 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 of facilities approved by this Commission.[16] Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan) shall notify the Commission's environmental staff by telephone or facsimile of any

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

environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Kinder Morgan. Kinder Morgan shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

VI. Conclusion

50. At a hearing held on September 10, 2003, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Kinder Morgan pursuant to Section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate facilities as described and conditioned herein, and as more fully described in the application.

(B) Kinder Morgan's proposed recourse rates for service under Rate Schedules CMC-1 and CMC-2 and its pro forma tariff filing are approved subject to conditions as detailed in this order.

(C) The certificate authority issued in Ordering Paragraph (A) shall be conditioned on the following:

(1) Kinder Morgan's completing the proposed facilities and making them available for service within one year of issuance of this order pursuant to paragraph (b) of Section 157.20 of the Commission's regulations;

(2) Kinder Morgan'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) Kinder Morgan's following the reporting requirements of 157.214(c).

(4) Kinder Morgan's executing contracts for the quantity and terms of service represented in the precedent agreements prior to commencing construction;

(5) Kinder Morgan's filing not less than 30 days and not more than 60 days prior to commencing service, either its negotiated rate contracts or tariff sheets reflecting the essential elements of its negotiated rate agreements, as discussed in the body of this order.;

(6) Kinder Morgan's compliance with the environmental conditions listed in the appendix to this order.

(D) Kinder Morgan 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 Kinder Morgan. Kinder Morgan shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(E) Kinder Morgan shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under recourse rates in accordance with Section 154.309 of the Commission's regulations.

(F) All late motions to intervene are granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

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

1. Kinder Morgan shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to a staff data request) and as identified in the environmental assessment (EA), unless modified by this Order. Kinder Morgan 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 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, Kinder Morgan 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. Kinder Morgan shall not begin construction activities until:

   a. the staff receives the concurrence of the U.S. Fish and Wildlife Service (FWS) regarding the mitigation proposed for protection of the mountain plover;

b. the staff completes any required Section 7 obligations with the FWS; and

c. Kinder Morgan has received written notification from the Director of the OEP that construction or use of mitigation may begin.

5. Kinder Morgan shall file a noise survey with the Secretary no later than 60 days after placing the authorized units at the Huntsman Compressor Station in service. If the noise attributable to the operation of the new units and the station as a whole at full load exceeds a day-night sound level(L_{dn}) of 55 dBA at any nearby noise sensitive areas (NSA), Kinder Morgan shall install additional noise controls to meet that level within 1 year of the in-service date. Kinder Morgan shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

6. Kinder Morgan shall file a noise survey with the Secretary no later than 60 days after placing the Kimball Junction Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Kimball Junction Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, Kinder Morgan shall file a report on what changes are needed and shall install the additional noise controls to meet that level within 1 year of the in-service date. Kinder Morgan shall confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.