

122 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Kinder Morgan Interstate Gas Transmission LLC

Docket No. CP07-430-000

ORDER ISSUING CERTIFICATE

(Issued February 21, 2008)

1. On August 6, 2007, 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 for the authority to construct and operate approximately 41.4 miles of 12-inch diameter natural gas pipeline, associated delivery meter stations and ancillary facilities, known as the Colorado Lateral Expansion Project (Colorado Lateral). The Colorado Lateral will commence at an interconnection with Kinder Morgan's existing pipeline at the Cheyenne Hub and extend to the Greeley, Colorado market area, all located in Weld County, Colorado, and will be designed to deliver up to 55,000 Dth/d of natural gas.¹ Kinder Morgan proposes incremental initial rates for service on the Colorado Lateral. For the reasons discussed below, we will grant the requested certificate authority, subject to conditions.

Description of the Project

2. The Colorado Lateral will consist of approximately 41.4 miles of 12-inch diameter pipeline beginning at Kinder Morgan's existing facilities located at the Rockport Compressor Station within the Cheyenne Hub and terminating in the Greeley, Colorado

¹ Approximately 90 percent of the proposed Colorado Lateral Expansion Project route from the Cheyenne Hub to the Greeley market area was authorized in 1998 by the Commission for Kinder Morgan's affiliate, K N Wattenberg Transmission Limited Liability Company for what was known as the Front Runner Pipeline. The Front Runner Pipeline was never built since it was deemed uneconomical at the time but Kinder Morgan states that, in the intervening years (1997 to 2005), natural gas delivered to Colorado consumers increased 49 percent as reported by the U.S. Energy Information Administration.

market area, all in Weld County, Colorado. In addition, Kinder Morgan will construct four delivery meter stations: the Eaton Meter Station; the Bracewell Meter Station; the Greeley North & West Meter Station and the Greeley South Meter Station.² Kinder Morgan will also construct and operate certain ancillary facilities as defined in section 2.55(a) of the Commission's regulations.³ The completed facilities will have the capacity to deliver up to 55,000 Dth/d to the Greeley market area, at a total estimated cost of \$29,740,800.⁴

3. Kinder Morgan held an open season February 12, 2007 through March 2, 2007, in which it disclosed that it had entered into a pre-arranged binding precedent agreement with Atmos Energy Corporation (Atmos) and was soliciting additional support to expand the project. No other shippers entered into binding precedent agreements as a result of the open season. Therefore, Atmos is the single committed shipper.

4. Atmos is a natural gas local distribution company (LDC) that provides service to customers in areas of Colorado, including the Greeley market area. Atmos currently obtains all of its transportation service for natural gas supplies in the Greeley area from the Public Service Company of Colorado (PSCo), which is also an LDC,⁵ and a wholly owned subsidiary of Xcel. Upon completion of the project, Atmos will be able to receive transportation service from both PSCo and Kinder Morgan to serve the Greeley market area.

5. Atmos will receive the volumes delivered by Kinder Morgan through new distribution line extensions (Atmos extension lines) which will interconnect with the proposed Colorado Lateral at each of the four delivery meter stations being constructed. The Atmos extension lines will be located entirely within Atmos' existing state certificated service area, within which it is the exclusive provider of natural gas distribution service to retail end use customers. As a part of the precedent agreement between Kinder Morgan and Atmos, Kinder Morgan will construct and pay for the Atmos

² In addition to receipts from Kinder Morgan's Cheyenne Hub facilities, the lateral will have the capability to receive natural gas from Wyoming Interstate Company (WIC), Colorado Interstate Gas Company (CIG) and Xcel Energy (Xcel) at sufficient pressures to meet contractual requirements.

³ 18 C.F.R. § 2.55 (2007).

⁴ The total estimated cost of construction consists of \$23,549,557 in jurisdictional costs and \$6,191,243 in non-jurisdictional costs. Exhibit K to Application.

⁵ PSCo is also a Hinshaw pipeline that performs gas transportation service in interstate commerce pursuant to a Part 284 blanket certificate issued by the Commission in *Public Service Commission of Colorado*, 61 FERC ¶ 62,012 (1992).

extension lines and will convey them to Atmos prior to commencement of service on the lateral. Atmos then will own and operate the lines as part of its natural gas distribution system in the Greeley area subject to the jurisdiction of the Colorado Public Utilities Commission (Colorado PUC).

6. The precedent agreement between Kinder Morgan and Atmos is a negotiated rate agreement for a primary term of ten years and rollover rights for another ten years for a total possible term of 20 years. Kinder Morgan will provide transportation service at an initial volume of 47,000 Dth/d, stepping up to 55,000 Dth/d for years five through ten, which is the full capacity of the lateral. Kinder Morgan requests confidential treatment of the precedent agreement pursuant to section 388.112 of the Commission's regulations, alleging it contains commercially sensitive information.⁶

7. Because the Colorado Lateral entails the construction of a discrete delivery lateral from Kinder Morgan's interstate system to serve a new market area, Kinder Morgan proposes initial incremental recourse rates to collect the costs for the project. Kinder Morgan states that the proposed incremental firm and interruptible transportation rates are cost-based rates derived solely from the cost of the facilities.

8. The proposed incremental firm transportation (FT) monthly reservation recourse rate is \$9.3733 per Dth, and will be applicable to shippers that use the Colorado Lateral facilities. The interruptible transportation (IT) rate for the project will be \$0.3082 per Dth stated on a volumetric basis. Kinder Morgan has designed the rates using the total capacity of the project, including a representative level of interruptible service. Because Kinder Morgan has allocated costs and volumes to interruptible service, it proposes to retain any interruptible revenues earned on the lateral.

9. Kinder Morgan has calculated its incremental rates using the cost of service factors approved by the Commission in Kinder Morgan's last general rate case,⁷ except for the depreciation rate. Kinder Morgan proposes to use a composite depreciation rate of 5 percent in place of the 2.5 percent used in the rate case. Kinder Morgan asserts that the 5 percent depreciation rate corresponds to the potential 20-year contract term for Atmos' use of the facilities. Because Atmos is the sole customer, Kinder Morgan submits that depreciation over 20 years is reasonable and matches the economic life of the lateral.

10. Finally, because the Lateral requires no compression, Kinder Morgan does not propose to assess a charge for fuel use.

⁶ 18 C.F.R. § 388.122 (2007).

⁷ *KN Interstate Gas Transmission Co.*, 89 FERC ¶ 61,323 (1999).

Notice, Interventions, Comments and Protests

11. Notice of Kinder Morgan's application was published in the *Federal Register* on August 21, 2007 (72 Fed. Reg. 46617). Interventions were filed by PSCo, SourceGas Distribution LLC (SourceGas) and CIG. Late motions to intervene were filed by Atmos, the City of Greeley, Colorado (City of Greeley) and the Colorado Office of Consumer Counsel (OCC). PSCo and SourceGas protested the filing while the City of Greeley submitted comments.

12. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214(c) (2007)). The Commission finds that granting the late-filed motions to intervene at this early date will not delay, disrupt or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motions to intervene (18 C.F.R. § 385.214(d) (2007)).

13. Kinder Morgan and Atmos filed answers to the comments and protests.⁸ Kinder Morgan also submitted an answer to a staff data request on October 16, 2007, containing supplemental information that is incorporated in the discussion portion of this order. We will discuss the protests and comments below.

Request for Stay

14. PSCo requests the Commission to stay consideration of Kinder Morgan's application until Kinder Morgan and Atmos demonstrate that they have authority from the state regulatory agency, the Colorado PUC, to construct the non-jurisdictional extension lines. In the alternative, if the Commission decides to issue a certificate to Kinder Morgan, PSCo requests that the certificate be conditioned upon Kinder Morgan providing evidence that Atmos has obtained from the Colorado PUC final, non-appealable authorization for the Atmos extension lines.

15. We reject PSCo's request to deny or delay approval of Kinder Morgan's application until it can demonstrate that Kinder Morgan and Atmos have received authority from the Colorado PUC to construct the Atmos extension lines. PSCo has failed to provide any support for such a request. The Commission commonly issues certificates for jurisdictional projects without waiting for a state's decision regarding a

⁸ Although section 385.213(a)(2) of the Commission's regulations generally bars answers to protests, the Commission considers such responses when they contain information useful to our decision making as is the case here.

related non-jurisdictional aspect of a project.⁹ The Commission will not stay this proceeding simply because PSCo asserts that Atmos currently lacks authority from the State of Colorado.¹⁰

Discussion

16. Because the proposed facilities will be used to transport gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

17. On September 15, 1999, the Commission issued a Policy Statement¹¹ providing guidance as to how proposals for certificating new construction will be evaluated. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, 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.

18. Under this policy the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of a

⁹ See, e.g., *Tennessee Gas Pipeline Co.*, 69 FERC ¶ 61,239 at 61,899-900 (1994) (Commission issues blanket certificate to pipeline rejecting request to hold proceeding in abeyance until resolution of legal claims under state law regarding associated state facilities); *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069 at 61,149 (1990).

¹⁰ We note that Kinder Morgan and Atmos have provided evidence to support their claims that Atmos has state certificate authority to own and operate the Atmos extension lines. Kinder Morgan September 19, 1997 Answer at 12-14; Atmos September 19, 2007 Answer at 4-9.

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying policy*, 92 FERC ¶ 61,094 (2000) (Policy Statement).

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.

19. The Colorado Lateral meets the Policy Statement's threshold test. There will be no subsidization by existing customers of this expansion project because Kinder Morgan proposes to charge an incremental rate for service on the lateral. Atmos and other future shippers that may use the lateral will bear the costs of the project. SourceGas expresses concern that, in the event Atmos does not renew its contract at the end of its initial ten-year term, Kinder Morgan may attempt to collect Colorado Lateral costs from shippers that do not use the lateral facilities. We have determined that the negotiated reservation rate that Atmos has agreed to pay for the ten-year primary term will recover the cost of investment in the proposed facilities. In addition, should Kinder Morgan propose in the future to roll the costs of the lateral facilities into its system rates, it will have to demonstrate at that time that such treatment would not result in subsidization of the facilities by non-lateral shippers.

20. PSCo is an LDC subject to the jurisdiction of the Colorado PUC. It currently serves Atmos in the Greeley area under a contract that is scheduled to terminate April 30, 2008, subject to year-to-year renewals. PSCo requests that the Commission deny Kinder Morgan's application because the adverse impacts of building the Colorado Lateral outweigh the alleged benefits. It notes that the Colorado Lateral is being built to serve only one customer, Atmos, and that the lateral will not provide a major competitive alternative for Atmos because Atmos already has access to six interstate pipelines at the Cheyenne Hub and the Colorado Lateral only adds a redundant route. Second, PSCo asserts that the new lateral will not provide an additional route for upstream suppliers and shippers since Atmos has subscribed for all the new capacity. Third, PSCo states that the new lateral is not needed to improve reliability of service because it contends that the only time PSCo's system was not reliable was in February 2006 when cold weather and a supply shortage affected PSCo's service and a second pipeline would not have made a difference in that instance.

21. PSCo asserts that the benefits of this project are illusory but that PSCo's customers will suffer real harm when Atmos, its largest customer, leaves its system. PSCo maintains that if the Colorado Lateral is built, 456,784 Dth/d of capacity will be stranded on PSCo's system and \$3.8 million in revenues lost will either shift to PSCo's other customers or be absorbed by its shareholders. In addition to the adverse economic impacts, PSCo states that a duplicative pipeline will cause environmental disturbances that should weigh heavily against approval of the project since the sole purpose of the project is to introduce a competitive alternative to a market already being served.

22. PSCo's arguments are unpersuasive. The Colorado Lateral should benefit interconnecting pipelines and their customers by increasing their options to transport gas from the Cheyenne Hub to various market areas along the Front Range. Until now, this area has been served by one dominant interstate carrier, CIG, and one dominant intrastate carrier, PSCo. The Colorado Lateral will introduce competitive options for shippers, including those who may otherwise be captive to CIG or PSCo. Because Atmos currently is captive to PSCo for transportation service in the area in and around Greeley, the Colorado Lateral will provide a major competitive alternative to Atmos. The addition of this alternate route, by definition, increases reliability of service. The public benefit of the project is evidenced by the market demand for all of the project's capacity, which is subscribed by Atmos under a long-term precedent agreement.

23. We are unconvinced that the adverse impacts of this proposal outweigh the benefits. PSCo and Atmos are LDC competitors, and PSCo's position is that Atmos should not be able to diversify its supplies. PSCo asserts that loss of Atmos as a customer and the resulting stranded costs cannot be counterbalanced by the benefit of increased competition. We find that this misreads the Policy Statement which emphasizes that although the impact on existing pipelines must be considered, "the impact of a new project on existing pipelines serving the market is not synonymous with protecting incumbent pipelines from risk of loss of market share to a new entrant...."¹² The Commission is bound to protect against unfair competition -- not all competition. In this case there has been no allegation of unfair competition.

24. Although PSCo alleges economic harm will result from Atmos' defection, it has not offered any evidence of how much cost shifting will occur. The loss of Atmos' business may be ameliorated by new customers seeking service on PSCo or existing customers increasing their current service. The situation is not unlike that in traditional "bypass" cases, where an industrial end user makes the economic choice to shift its business from an LDC to direct service from an interstate pipeline. In such cases the Commission has refrained from second guessing the economic decisions of end users to achieve better prices from new suppliers,¹³ and relied on the fact that state public service commissions will assure that any cost shifting effects that do occur at the state level will be allocated reasonably and in accord with state goals and policies.¹⁴

25. Finally, there should be no significant adverse impact on adjacent landowners. Approximately 94 percent of the pipeline route would be constructed adjacent to or

¹² Policy Statement at p. 61,748.

¹³ See *Northern Natural*, 74 FERC ¶ 61,172 at p. 61,604 (1996).

¹⁴ See *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,136 at p. 61,551 (1999).

within existing pipeline rights-of-way. Although the City of Greeley objects in its comments to the proposed location of two metering stations on one of the non-jurisdictional extension lines that Kinder Morgan will transfer to Atmos, the Environmental Assessment (EA) issued in this proceeding¹⁵ reflects that Kinder Morgan has agreed to relocate meter stations to address some of the City of Greeley's concerns.¹⁶ Further, because the stations will still be visible to local residents, this order contains an environmental condition that requires Kinder Morgan to work with the City of Greeley to develop a visual screening plan for those meter stations prior to construction. No other landowners protested the application.

26. We find that the public benefits of additional competitive gas supplies to serve an expanding market outweigh potential adverse impacts that would result from the proposed construction. Therefore, we find that the Colorado Lateral is required by the public convenience and necessity.

B. Rates

1. Recourse Rates

27. Kinder Morgan's proposed incremental recourse rates for FT and IT service are cost-based rates derived solely from the cost of the proposed facilities. The incremental FT rate is \$9.3733 per Dth. The IT rate is \$0.3082 per Dth. The FT and IT rates are applicable to shippers which use the Colorado Lateral facilities. Kinder Morgan states that it has designed the rates using the total capacity of the project, including a representative level of interruptible service and, therefore, Kinder Morgan proposes to retain any interruptible revenues earned on the lateral.¹⁷

28. We believe Kinder Morgan has calculated its proposed FT and IT rates incorrectly on page 3 of Exhibit P (Part I) to its Application. Although Kinder Morgan states that its design capacity for the Colorado Lateral is 55,000 Dth/d, it has designed the FT and IT rates using a capacity of 47,000 Dth/d, plus 8,000 Dth/d of imputed IT volumes. The Commission's general policy is to design initial firm rates assuming billing determinants equal to maximum design capacity of the system and to design interruptible rates based on the 100 percent load factor equivalent of the firm rate. If a new pipeline elects to impute interruptible volumes, the result should be a reduction to the firm transportation rate, reflecting the fact that any interruptible revenue from the project will be retained by

¹⁵ The EA issued on January 11, 2008, with comments due on February 11, 2008.

¹⁶ EA at 28-29.

¹⁷ Citing *Entregas Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 51 (2005); *Ingelside Energy Ctr. LLC*, 112 FERC ¶ 61,101 at P 26-28 (2005).

the pipeline and not credited to firm shippers. Kinder Morgan must recalculate its FT recourse rates using its maximum system design capacity and the imputed interruptible volumes,¹⁸ and the IT rate at the 100 percent load factor equivalent of the FT rate.¹⁹ Kinder Morgan must file a tariff sheet reflecting the recalculated recourse rates at least 30 but not more than 60 days before service commences.

2. Non-Jurisdictional Facility Costs

29. As indicated above, Kinder Morgan has agreed to construct and pay for new distribution extension lines to interconnect its proposed delivery meter stations with Atmos' distribution system. While Atmos will own and operate the lines, Kinder Morgan proposes to recover the \$6.2 million cost of these non-jurisdictional facilities through its proposed incremental rate for service on the Colorado Lateral.²⁰ Kinder Morgan indicates that Atmos has informed Kinder Morgan and Colorado regulatory authorities that it will not include in its rate base or distribution rates any capital costs associated with the conveyed facilities so that shippers will not pay twice for the facilities.²¹ Kinder Morgan maintains this is the proper rate treatment for these costs and contends that making contributions in aid of construction and subsequently including such contributions in rate base is standard practice in the interstate pipeline business.

30. PSCo requests that if Kinder Morgan's application is accepted that the Commission require removal of the Atmos extension line costs from the recourse rates since those non-jurisdictional facilities will be owned and operated by Atmos.

31. Atmos is currently the only identified shipper on the proposed Colorado Lateral and will subscribe the full capacity of the facility on a firm basis in years 5-10 of the initial term of its service agreement with Kinder Morgan. While the Commission has previously authorized the inclusion of a contribution in aid of construction of non-jurisdictional facilities in an incremental rate for service over a lateral line facility,²² the

¹⁸Kinder Morgan shall use the following to derive its rates: 55,000 Dth/d + 8,000 Dth/d = 63,000 Dth/d.

¹⁹*See, e.g., Discovery Gas Transmission LLC*, 107 FERC ¶ 61,124 (2004); *Southern Natural Gas Company and SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 (2002); *Pacific Gas Transmission Co.*, 70 FERC ¶ 61,016 at 61,045 (1995), *aff'd*, 71 FERC ¶ 61,286 (1995); *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1966).

²⁰ Ex. K to Application.

²¹ Kinder Morgan states that it has not included Operation and Maintenance costs associated with the extension laterals in the rates since Atmos will operate the laterals.

²² *See Kern River Gas Transmission Co.*, 99 FERC ¶ 61,085 (2002).

Commission has also expressed concern regarding recovery of contributions in aid of construction related to facilities that will not be operated under the Commission's open-access policies and regulations.²³ Thus, continued inclusion of the costs in Kinder Morgan's rate base will be subject to scrutiny in its next rate case.²⁴

32. Kinder Morgan proposes to record the costs to construct the line extensions, less the amount of the nominal payment, in Account 303, Miscellaneous Intangible Plant, as a contribution in aid of construction. Once the lateral is placed in service, the intangible asset will be amortized by Kinder Morgan by debiting Account 404.3, Amortization of Other Limited-Term Gas Plant, and crediting Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant, over the term of the transportation agreement with Atmos.²⁵ This accounting treatment is consistent with the Commission's Uniform System of Accounts and, for accounting purposes only, is therefore approved.²⁶

3. Depreciation Rate

33. Kinder Morgan proposes to use a 5 percent depreciation rate based on the economic life of the facilities as determined by contract term because the project is designed to serve a single customer and market.

34. PSCo and SourceGas request that Kinder Morgan's proposal to use a depreciation rate of 5 percent should be rejected and replaced with the 2.5 percent rate authorized in Kinder Morgan's most recent rate case.²⁷ SourceGas states basing the depreciation rate on the possibly 20-year Atmos contract is unsupported and would provide a troubling precedent. It notes that most of the exiting firm capacity on Kinder Morgan is subscribed for terms of less than 20 years and that pegging depreciation to contract terms would arbitrarily increase rates without considering the valid remaining life of the facilities through which the service is provided.

²³ See, e.g., *Southern Natural Gas Co.*, 82 FERC ¶ 61,249 at 61,996 (1998), *reh'g denied*, 85 FERC ¶ 61,330, at 62,297 (1998).

²⁴ See, e.g., *Trunkline Gas Co.*, 122 FERC ¶ 61,050 (2008)

²⁵ Kinder Morgan will amortize the intangible asset at an annual rate of five percent, which is based on the potential 20-year contract term with its single customer, Atmos.

²⁶ See, e.g., *Kern River Gas Transmission Co.*, 99 FERC ¶ 61,085 (2002); *Georgia Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271 (2002); *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205 (2002); *Horizon Pipeline Co., L.L.C.*, 92 FERC ¶ 61,205 (2000).

²⁷ *KN Interstate Gas Transmission Co.*, 89 FERC ¶ 61,323 (1999).

35. Although the Commission generally bases the depreciable life of facilities on the estimated useful life of facilities, the Commission has deviated from this policy with respect to delivery laterals built on behalf of specific customers and has allowed the depreciation rate to be based on the life of the contract.²⁸ Those circumstances exist here where the facilities are being built to provide service to Atmos. Accordingly, we will accept Kinder Morgan's depreciation rate of 5 percent for the Colorado Lateral only.

4. Fuel, Lost and Unaccounted For

36. Kinder Morgan proposes not to charge for fuel use because the Colorado Lateral uses no compression. Kinder Morgan states that if a shipper transporting gas on the lateral receives that gas from upstream points on Kinder Morgan's system which are not located on the lateral, its system-wide charge for fuel use will be assessed.

37. SourceGas asserts that Kinder Morgan has not adequately explained why there should be no fuel charge assessed for using the lateral. It notes that a number of existing pipeline segments have no compression and are charged for fuel since they benefit from compression across the system. The Commission has found that in circumstances where the pipeline can show that no fuel is used to perform a service, it is appropriate to exempt that service from a fuel use charge.²⁹ There will be no compression on the Colorado Lateral. Further, analysis of the flow diagrams submitted by Kinder Morgan verifies that existing system compression will not be used to transport gas received on the lateral. Therefore, because there will be no compression on the Colorado Lateral and no fuel is used to perform service on such lateral, the Commission approves Kinder Morgan's proposal not to assess a fuel charge on service over the Colorado Lateral.

5. Negotiated Rate

38. Kinder Morgan and Atmos propose to enter into a negotiated rate agreement for service on the proposed facilities. In certificate proceedings we establish initial recourse rates, but do not make determinations regarding specific negotiated rates for proposed

²⁸See, e.g., *Algonquin Gas Transmission Co.*, 118 FERC ¶ 61,222 at P 35 (2007).

²⁹See, e.g., *Trunkline Gas Co.*, 106 FERC ¶ 61,019 (2004); *Reliant Energy Gas Transmission Co.*, 100 FERC ¶ 61,290 (2002).

services.³⁰ In order to comply with the Alternative Rate Policy Statement³¹ and our decision in *NorAm Gas Transmission Co.*,³² we will direct Kinder Morgan to file its negotiated rate contracts, or numbered tariff sheets, not less than 30 days or more than 60 days, prior to the commencement of service, stating for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreement does not deviate in any material respect from the form of service agreement in Kinder Morgan's pro forma tariff. Kinder Morgan must also disclose all consideration received that is associated with the agreement. Finally, Kinder Morgan must also 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 identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

C. Pro Forma Tariff

39. Kinder Morgan proposes to modify its currently approved FERC Gas Tariff to incorporate the new incremental firm and interruptible transportation rates applicable to the Colorado Lateral.³³ We find that Kinder Morgan's pro forma tariff sheets to implement the new Colorado Lateral incremental rates under Rate Schedules FT and IT comply with Part 284 of the Commission's regulations.³⁴ The Commission will require Kinder Morgan to file actual tariff sheets reflecting the revised rates at least 30 days but no more than 60 days prior to the commencement of service.

³⁰ *CenterPoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007 at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028 at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052 at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360 at n.19 (2002).

³¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *order granting clarification*, 74 FERC ¶ 61,194 (1996), *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *pet. 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) (Alternative Rate Policy Statement).

³² 77 FERC ¶ 61,011 (1996).

³³ Ex P, Part II to Application.

³⁴ 18 C.F.R. Part 284 (2007).

D. Confidential Treatment of Precedent Agreement

40. PSCo states that Kinder Morgan's proposal is intended to displace the gas transportation service that PSCo currently provides to Atmos. PSCo argues that Kinder Morgan has not shown that the precedent agreement with Atmos contains commercially sensitive information. PSCo contends that the details of the agreement are essential to understanding the jurisdictional issues raised by Kinder Morgan's application and the Atmos extension lines and offers to execute a confidentiality agreement to limit the use of that allegedly sensitive information and the personnel that could review the data.

41. We are unconvinced by PSCo's argument that there are compelling reasons for disclosing the precedent agreement between Kinder Morgan and Atmos. Commission precedent provides for the confidential treatment of negotiated rate precedent agreements in certificate cases.³⁵ PSCo is Kinder Morgan's competitor for Atmos' business. Exposing the terms of the precedent agreement to PSCo and any other Kinder Morgan competitors could undercut Kinder Morgan's plans to develop new sources of supply.

42. The relevant facts of the precedent agreement are set forth in the Application. Full disclosure of the precedent agreement is not needed to determine whether its terms conform with the Commission's negotiated rate policies. The precedent agreement expresses the parties' intention to enter into a later firm transportation service agreement or contract. It is that contract that is required to conform to Kinder Morgan's tariff and the Commission's negotiated rates policies. As is our policy when negotiated rates are proposed for expansion facilities, we are requiring Kinder Morgan to either file executed contracts or numbered tariff sheets prior to commencement of service. That filing does not receive confidential treatment since full disclosure of negotiated rates is necessary to allow the Commission and the public to ensure that the agreements are not unduly discriminatory. When Kinder Morgan makes the requisite filing, PSCo may review the negotiated rate agreements or tariff sheets for conformity.

E. Environment

43. On August 30, 2007, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Colorado Lateral Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to about 350 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, local libraries and newspapers, property owners affected by the pipeline route, and other interested individuals.

³⁵ See *Kinder Morgan Interstate Gas Transmission LLC*, 104 FERC ¶ 61,266, at P 37 (2003).

44. We received two comments on the NOI. PSCo asked that the non-jurisdictional facilities be included in the environmental review and stated that its existing system could transport the gas, thus negating the need for the project. Additionally, the City of Greeley requested that the proposed Greeley North & West Meter Station and the Greeley South Meter Station comply with the Greeley Comprehensive Plan, providing for commercial development along the city's arterial corridors.

45. Our staff prepared an environmental assessment (EA) on January 11, 2008, for Kinder Morgan's proposal. The EA addresses land requirements; water use and quality; fish, vegetation, and wildlife; threatened and endangered species; cultural resources; air quality; noise; land use; and alternatives. Staff's EA also responded to the comments from PSCo and the City of Greeley. The non-jurisdictional lateral pipelines extending between the meter stations and the delivery points are discussed in the EA. Regarding PSCo's existing system, the EA concluded that while upgrading existing facilities may be a preferable alternative to the proposed project from purely an environmental standpoint, this would not meet the project objective of enhancing the transportation options for market areas along the Front Range in Colorado. To address the City of Greeley's comment, Kinder Morgan has agreed to locate its meter stations in locations that are either more consistent with existing land uses or are less commercially desirable.

46. Forty-five copies of the EA were distributed to federal and state agencies, persons responding to the NOI, and local libraries and newspapers for public comment on January 11, 2008. Comments on the EA were received from Kinder Morgan on February 8, 2008, and from PSCo on February 11, 2008.

47. Kinder Morgan states the construction right-of-way width for the non-jurisdictional facilities has changed from the original 40 feet to 52 feet wide. This additional right-of-way width would disturb about 16 acres of rangeland, crop, and pasture land not previously analyzed in the EA. There is no need for additional action because the EA already reviewed the survey information for all of the additional areas of disturbance, in addition to the original areas, for threatened and endangered species and cultural resources.³⁶

48. Kinder Morgan also states that it agrees to abide by staff's Wetland and Waterbody Construction and Mitigation Procedures (Procedures) with respect to any horizontal directional drilling (HDD) operations. By Kinder Morgan's acceptance of staff's Procedures, it has committed to developing an HDD Contingency Plan, thus eliminating the need for staff's HDD Contingency Plan recommendation, which was contained in recommendation 11 in the EA.

³⁶ EA at 21-22.

49. PSCo questions whether the non-jurisdictional laterals would be subject to review and regulation by the Colorado PUC as stated in the EA. PSCo notes that Atmos' September 19, 2007 answer states that further authorization from the Colorado PUC is unnecessary because it claims to already have the authority to expand in its service area. Further, PSCo states that it has filed a complaint with the Colorado PUC requesting that Kinder Morgan be required to obtain a state certificate of public convenience and necessity prior to construction of the non-jurisdictional facilities. PSCo repeats its request that the Commission add a condition to any certificate that we issue to Kinder Morgan to require that construction not be allowed to commence until the Colorado PUC issues an order authorizing the construction of the non-jurisdictional laterals.

50. The EA addresses the environmental impact associated with the construction of the non-jurisdictional facilities for the purpose of providing the Commission with a full and complete environmental record prior to making a decision. The Commission is not, however, making a decision on whether to approve or authorize the construction of the non-jurisdictional facilities. As noted, Atmos states that it already holds authority from the Colorado PUC to expand its distribution system within the distribution line area. If the Colorado PUC determines at some later point that it must conduct additional review of the non-jurisdictional facilities, it could withhold approval of the construction of those facilities until it receives all necessary information. Our review and approval of Kinder Morgan's facilities is not dependent on any further review of the non-jurisdictional facilities. Therefore, imposing a condition to withhold approval of construction of Kinder Morgan's facilities is not warranted.

51. PSCo states that the EA's favorable finding for Kinder Morgan's proposal was not based on environmental considerations, but purely economic grounds and the Commission must explain why the potential for additional transportation options should outweigh the environmental impacts of a new pipeline. PSCo further states that Atmos is not captive to a single upstream pipeline supplier, so adding one more transportation option is not an adequate reason to permit the unquestionable environmental impacts of the proposal.

52. PSCo misinterprets the conclusion of the EA. The EA states that from purely an environmental standpoint the alternative of upgrading PSCo's system would be preferable under the assumption that PSCo would require fewer facilities to upgrade its existing system between the Cheyenne Hub and Greeley. The EA goes on to note that this alternative is not able to meet Kinder Morgan's objectives of providing an additional reliable source of natural gas to Greeley and enhancing the transportation options for market areas along the Front Range in Colorado. The EA's conclusion that Kinder Morgan's proposal, as modified by the staff's recommended mitigation measures, is an environmentally acceptable action is based on staff's analysis of potential impacts on various resource areas. The EA does not conclude that providing additional transportation options outweighs the environmental impacts of a new pipeline, but instead

acknowledges that the Commission will consider both environmental and non-environmental aspects of the project in reaching a decision.

53. As discussed earlier in this order, the Greeley market area is currently served by only CIG and PSCo. The Colorado Lateral will introduce competitive options for shippers at the Cheyenne Hub and provide a major competitive alternative for Atmos, thereby introducing competitive pressure for lower transportation prices and better services.

54. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Kinder Morgan's application, supplemental data responses, and staff's recommendations, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

55. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁷

56. Kinder Morgan shall notify the Commission's environmental staff by telephone, e-mail 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.

Conclusion

57. For the reasons discussed and with the conditions imposed herein, the Commission finds that the certificate authorization requested by Kinder Morgan is required by the public convenience and necessity.

58. At a hearing held on February 21, 2008, the Commission on its own motion, received and made part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding and upon consideration of the record,

³⁷See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Kinder Morgan pursuant the section 7(c) of the NGA authorizing Kinder Morgan to construct and operate the natural gas facilities, as described and conditioned herein, and as more fully described in the application.

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

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

(2) Kinder Morgan's compliance with all applicable Commission regulations including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission regulations;

(3) Kinder Morgan complying with the environmental conditions listed in the appendix to this order.

(C) Kinder Morgan's proposed incremental recourse rates, as revised, are approved.

(D) Kinder Morgan shall file actual tariff sheets to implement its proposed rates at least 30 days and not more than 60 days before service commences, reflecting its recalculation of its recourse rates using its maximum system design capacity, as discussed in the body of this order.

(E) Kinder Morgan shall file either its negotiated rate agreement with Atmos or a tariff sheet describing the transaction, at least 30 days and not more than 60 days prior to the commencement of service on the project for each shipper paying a negotiated rate.

(F) Kinder Morgan must execute a firm contract with Atmos equal to the level of firm service and in accordance with the terms of service represented in its precedent agreement prior to commencing construction.

(G) Kinder Morgan shall adhere to the accounting requirements discussed in this body of this order.

(H) Kinder Morgan shall notify the Commission's environmental staff by telephone, e-mail 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.

(I) The late motions to intervene are granted.

(J) PSCo's request for a stay is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Environmental Conditions

1. Kinder Morgan Interstate Transmission, LLC (Kinder Morgan) shall follow the construction procedures and mitigation measures described in its application, supplements (including responses to staff data requests), and as identified in the Environmental Assessment (EA), unless modified by the Federal Energy Regulatory Commission (Commission) 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 the Commission 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 the 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 (EIs), and contractor personnel will be informed of the EIs' 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 and data responses. **As soon as they are available, and before the start of construction**, Kinder Morgan 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 the Commission Order. All requests for modifications of environmental conditions of the Commission Order or site-specific clearances must reference locations designated on these alignment maps/sheets.

Kinder Morgan's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with the authorized facilities and their locations. Kinder Morgan's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Kinder Morgan 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 extra workspace allowed by Kinder Morgan's Upland Erosion Control, Revegetation and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resource mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of its Certificate and before the start of construction,** Kinder Morgan shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Kinder Morgan will implement the mitigation measures required by the Commission Order. Kinder Morgan must file revisions to the plan as schedules change. The plan shall identify:

- a. how Kinder Morgan 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 EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Kinder Morgan will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Kinder Morgan's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Kinder Morgan will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Kinder Morgan shall employ at least two EIs. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission Order and other grants, permits, certificates, or authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Kinder Morgan shall file updated status reports prepared by the head EI with the Secretary on a **bi-weekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. 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 EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of 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 the Commission Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Kinder Morgan from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kinder Morgan's response.
9. Kinder Morgan must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facility in service**, Kinder Morgan 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 Kinder Morgan has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Kinder Morgan shall implement either full right-of-way topsoil stripping or ditch-plus-spoil-side topsoil segregation method in actively cultivated or rotated cropland and pastures, residential areas, and other areas at the landowner's or land managing agency's request.
12. Kinder Morgan shall not construct within 0.25 mile of any active great horned owl nest **between January 21 and May 15**.
13. Kinder Morgan shall continue to work with the City of Greeley to develop a visual screening plan for the proposed Greeley North and West Meter Station and the Greeley South Meter Station. **Prior to construction**, Kinder Morgan shall file the final visual screening plan for the two facilities, including any consultations or comments from the City of Greeley, with the Secretary for review and approval by the Director of OEP.
14. Kinder Morgan shall file an HDD noise analysis and mitigation plan, for the review and written approval of the Director of OEP **prior to construction**. The plan shall include a large scale (1:3,600 or greater) plot plan identifying the proposed HDD entry and exit locations and the nearest noise sensitive areas (NSAs), quantify the estimated noise levels at the NSAs that would result from the proposed HDD operations, and describe how noise levels would be controlled so they do not exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale at any nearby NSAs, or alternatively, indicate what mitigation would be offered to the residents of those NSAs.