

122 FERC ¶ 61,256
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.

Colorado Interstate Gas Company

Docket Nos. CP07-207-000
RP08-190-000

ORDER ISSUING CERTIFICATE AND TO SHOW CAUSE

(Issued March 21, 2008)

1. On April 27, 2007, Colorado Interstate Gas Company (CIG) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate approximately 164 miles of pipeline and appurtenant facilities in Adams, Morgan, and Weld Counties, Colorado (High Plains Expansion Project or project). The project will enable CIG to transport 899,000 dekatherms of natural gas per day (Dth/d). For the reasons discussed below, we will authorize the High Plains Expansion Project subject to certain conditions described in this order.

2. In this order we will also initiate an investigation under section 5 of the NGA in Docket No. RP08-190-000 and require CIG to show cause why its existing tariff provisions related to the unauthorized overrun rate during non-critical periods are just and reasonable and comport with Commission policy.

I. Background

3. CIG is a natural gas company as defined in the NGA and is subject to the jurisdiction of the Commission. It is a corporation duly organized and existing under the laws of the State of Delaware. Its principal place of business is in Colorado Springs, Colorado. CIG is authorized to do business in the states of Colorado, Kansas, Montana, New Mexico, Oklahoma, Texas, Utah, and Wyoming. CIG's interstate natural gas pipeline system extends from supply areas in Texas, Oklahoma, Kansas, Colorado, Wyoming, Montana, and Utah to major delivery areas along the eastern slope of the Rocky Mountain Front Range in Colorado and Wyoming. CIG also connects with other interstate pipelines in all of the states in which it operates except Montana.

II. CIG's Proposal

4. CIG states that the proposed High Plains Expansion Project addresses the need for new pipeline infrastructure in order to satisfy the increasing demand in heating and electrical generation due to population and industrial growth along the Colorado Front Range. As proposed, the design capacity of the High Plains Expansion Project is 899,000 Dth/d. CIG seeks to deliver the additional gas supplies as early as possible for the 2008-2009 winter heating season and projects an in-service date of August 2008.

A. Proposed Facilities

5. CIG proposes to construct and operate four segments of 24- and 30-inch diameter pipeline that would total approximately 164 miles in length in Adams, Morgan, and Weld Counties, Colorado, as follows:

- *Line No. 250A:* 64.5 miles of 30-inch diameter pipeline extending southward in Weld and Adams Counties, Colorado between CIG's existing Cheyenne Compressor Station to a point near the Town of Hudson, Colorado. From this point, the pipeline diameter would change to 24 inches and continue southeastward for 22.3 miles ending at an interconnection with proposed Line No. 251A.
- *Line No. 251A:* 57.9 miles of 24-inch diameter pipeline extending northeastward from CIG's existing Watkins Compressor Station in Adams County, Colorado, to the existing Fort Morgan Compressor Station in Morgan County, Colorado.
- *Line No. 252A:* 14.9 miles of 30-inch pipeline beginning north of the town of Hudson, Colorado and extending westward to a new interconnect with Public Service Company of Colorado's (PSCo) existing Tri-Town facilities located in Weld County, Colorado.
- *Line No. 253A:* 6.1 miles of 24-inch pipeline beginning at CIG's Watkins Compressor Station and extending westward to a point near CIG's existing East Denver measurement facility in Adams County, Colorado.

CIG requests authority to place each pipeline segment into service as it is completed, in order to make capacity available to the market as soon as it has been tested and approved for service.

6. In addition, CIG proposes to install ten metering facilities including interconnects with Wyoming Interstate Company, Ltd. (WIC), Rockies Express Pipeline, L.L.C.

(Rockies Express), Young Gas Storage Company, Ltd. (Young Storage),¹ a natural gas facility that is being developed by CIG,² multiple deliveries into PSCo's pipeline system, and CIG's existing system at the Watkins Compressor Station.³ CIG states that the project facilities will not be physically interconnected with the rest of CIG's existing mainline system with the exception of the Watkins Compressor Station in Adams County, which will be used for air-blending purposes to meet certain gas quality standards.

7. CIG also proposes to re-functionalize a portion of its existing Crazy Horse Lateral and its Blue Spruce Lateral, from CIG's mainline service, to service under the High Plains rate schedules. CIG states that the Crazy Horse Lateral is a 750-foot, 30-inch lateral pipeline constructed by CIG in 2007 under its automatic blanket construction certificate that interconnects the Rockies Express pipeline to CIG at the Cheyenne Hub in Weld County, Colorado. By refunctioning 30 percent of the Crazy Horse Lateral, CIG maintains that it will be able to connect its proposed High Plains pipeline facilities directly to Rockies Express without having to construct additional interconnection facilities. CIG states that the lateral is designed to flow from 25 to 600 MDth/d through the Crazy Horse meter and the lateral has the capacity to deliver similar quantities from Rockies Express to High Plains without impacting service to CIG's existing customers.⁴

8. CIG states that the Blue Spruce Lateral consists of 1.2 miles of 16-inch pipeline located near the existing Watkins Compressor Station in Adams County, Colorado that

¹ Young Storage is an affiliate of CIG. El Paso Corporation wholly owns CIG and has a 48 percent interest in Young Storage. *See* El Paso Corp., Annual Report (Form 10-K), at 2 & 4 (Feb. 21, 2007). Young Storage has no employees and is operated by CIG.

² On November 29, 2007, in Docket No. CP08-30-000, CIG filed an application under section 7 of the NGA requesting a certificate of public convenience and necessity authorizing it to construct and operate a new underground natural gas storage facility in Adams County, Colorado, referred to as the Totem Gas Storage Project (Totem Storage). CIG proposes to interconnect its proposed High Plains facilities with Totem Storage at the end of proposed line No. 250A. CIG's Totem Storage certificate application is currently pending Commission review.

³ CIG states that it will also construct auxiliary facilities such as valves, pig launchers and receivers, cathodic protection equipment, yard and station piping, and communication equipment under section 2.55 of the regulations.

⁴ *See* CIG's July 18, 2007 response to Staff Data Request, Question No. 2.

was constructed by CIG in 2003 under its blanket construction certificate in order to serve the Calpine Blue Spruce power plant. CIG explains that it received a contribution in aid of construction for this lateral for substantially all the investment from PSCo who holds a tolling arrangement⁵ for all the power at the plant. Since CIG has multiple facilities capable of providing service to the plant, CIG claims that it can re-functionalize the lateral without impairing its ability to provide mainline service to the facilities.⁶

B. Open Seasons and Precedent Agreements

9. CIG held an open season for the High Plains Expansion Project from January 12 through February 12, 2007. CIG states that the open season provided all interested parties the ability to bid for new incrementally-priced capacity from the Cheyenne Hub in Weld County, Colorado to interconnections with the distribution facilities of PSCo, Young Storage, and other potential storage facilities. PSCo and Coral Energy Resources, L.P. (Coral Energy) submitted bids and entered into precedent agreements for transportation service on the expansion project.⁷

10. The precedent agreement between CIG and PSCo provides for a maximum daily quantity (MDQ) of 874,000 Dth/d of firm transportation for an initial contract term of 21.5 years. Under the precedent agreement, the primary points of receipt are at the Cheyenne Hub, Young Storage, and Totem Storage for delivery to various new delivery points along the project facilities. PSCo has agreed to pay the maximum reservation rate for a separately priced, incremental rate service.

⁵ Under a tolling arrangement, a gas supplier would receive the output of a generator as payment for the gas it supplies to the generator.

⁶ See CIG's July 18, 2007 response to Staff Data Request, Question No. 2.

⁷ Exhibit I contains a copy of each of the executed precedent agreements. In its application, CIG requests confidential treatment of the precedent agreements contained in Exhibit I pursuant to section 388.112 of the Commission's Rules of Practice and Procedure. On July 13, 2007, CIG filed a public version of the precedent agreement between CIG and PSCo in response to a protest. See Exhibit A to CIG's July 13, 2007 Answer to the Protest of Marathon Oil Company (Marathon). CIG states that the precedent agreements will be replaced by transportation service agreements before construction of the High Plains Expansion Project begins. CIG indicates that it does not expect these transportation service agreements to contain non-conforming provisions that will require review by the Commission.

11. The precedent agreement between CIG and Coral Energy provides for an MDQ of 25,000 Dth/d of firm transportation for an initial contract term of five years. Coral Energy will deliver its natural gas to CIG at the Cheyenne Hub for subsequent transportation and delivery to the new High Plains Tri-town Meter Station, a bi-directional interconnection with PSCo. CIG states that Coral Energy has agreed to pay a rate equal to the proposed maximum recourse rate subject to that rate not exceeding a specified discount rate.

12. In the open season, CIG also stated that a shipper having transportation service on High Plains and service on a geographically and operationally workable storage field could convert its High Plains transportation service to a bundled short-notice service. CIG states that PSCo is the only customer who requested the ability to make such a conversion and PSCo has agreed to release up to 225 MMcf per day of its Young Storage capacity in order to provide the necessary storage capacity to support the short-notice service that CIG proposes to provide in this proceeding under Rate Schedule TSB-Y. CIG states that CIG and PSCo will finalize negotiations covering the TSB-Y service in the near future and will inform the Commission of the results of that process.

C. Financing and Lease Agreement

13. CIG states that WYCO Development LLC (WYCO), a Colorado entity jointly-owned by affiliates of PSCo and CIG⁸ will finance the project's estimated costs of \$196 million. CIG explains that it will construct the facilities for WYCO, and effective on the date the project facilities are ready to be placed in service, WYCO will lease the facilities to CIG pursuant to a lease agreement between WYCO and CIG (Lease Agreement).⁹ WYCO will lease the facilities to CIG at a monthly fee, under a monthly cost-of-service-based lease for a term of thirty years. Once the project facilities are leased to CIG, CIG states it will have complete operational control over the facilities.

⁸ WIC Holdings, Inc., a Delaware corporation and a direct subsidiary of CIG, and Xcel Energy Wyco, Inc., a Colorado corporation and an indirect affiliate of PSCo, are the current members of WYCO, both holding a fifty percent ownership interest in WYCO.

⁹ On July 18, 2007, CIG provided a copy of the form of Lease Agreement between CIG and WYCO. *See* CIG's July 18, 2007 response to Staff Data Request, Question No. 3c. On December 18, 2007, CIG filed an updated form of Lease Agreement which revises Article III, the terms of which describe how the project facilities will be operated and/or transferred at the termination of the lease.

14. Under the lease agreement, the monthly lease payments by CIG to WYCO will be based on cost-of-service factors, including depreciation expense and rate of return, as authorized by the Commission for recovery by CIG in the recourse rates applicable to the facilities. When these factors change in any subsequent CIG rate filing, the lease payment will change accordingly. CIG states that the lease payments are designed to replicate the impact to CIG and its ratepayers of direct ownership of the facilities.

15. Under Article III of the Lease Agreement, as revised, at the end of the lease term or at the termination of the lease for any other reason: (1) the lease will be renewed; (2) CIG will purchase the facilities from WYCO; or (3) WYCO will file a certificate application for authority to operate the facilities and CIG will file an abandonment application. CIG states that these revisions clarify that the leased facilities will remain in jurisdictional service under the Commission's authority after the expiration of the lease term.

D. Proposed Services and Recourse Rates

16. CIG proposes to modify its FERC Gas Tariff to incorporate six new rate schedules for service using the High Plains Expansion facilities and capacity it intends to acquire from Young Storage.¹⁰ Specifically, CIG proposes to offer firm transportation under Rate Schedule TF-HP, interruptible transportation under TI-HP, firm storage under Rate Schedule FS-Y, interruptible storage under IS-Y, a combined transportation and storage service under Rate Schedule TSB-Y, and an interruptible swing service under Rate Schedule SS-HP.

17. CIG estimates the construction costs of the project will be approximately \$196 million. CIG proposes to implement incremental firm and interruptible rates for transportation on the High Plains Expansion Project based on the cost of the facilities. For storage services using Young Storage capacity, CIG proposes to base the rates on Young Storage's existing maximum and minimum rates.

18. CIG proposes certain revisions to its Gas Quality Control (GQC) tariff provision in section 9 of the General Terms and Conditions of Service (GT&C). CIG also proposes to charge High Plains' transportation shippers a separate lost and unaccounted for charge of 0.15 percent, which will be adjusted periodically based on actual experience as part of CIG's fuel tracker filings.

¹⁰ CIG states that it will acquire capacity from Young Storage using its off-system capacity tariff provision.

III. Notice, Interventions, Comments, and Protests

19. Notice of CIG's application was published in the *Federal Register* on May 14, 2007 (72 Fed. Reg. 27,110). PSCo, BP America Production Company and BP Energy Company (collectively, BP), Marathon, Chevron Natural Gas, a division of Chevron U.S.A. Inc., and Windy Hill Gas Storage, LLC (Windy Hill) filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.¹¹

20. Aquila, Inc. (Aquila) filed an untimely motion for leave to intervene. Aquila has shown an interest in this proceeding and its participation will not delay the proceeding or prejudice the rights of any other part. Accordingly, for good cause shown, we will grant Aquila's late intervention.¹²

21. PSCo filed comments in support of the application stating that it needs the High Plains capacity to support its wind-powered generation in the Colorado Front Range. Marathon filed a protest regarding CIG's proposal to charge separate incremental rates and certain tariff provisions.¹³ Windy Hill filed a protest asserting that CIG's proposal to acquire capacity in Young Gas and to offer service on this capacity under the proposed High Plains rate schedules is unduly discriminatory and anti-competitive. Windy Hill also objects to CIG's proposal to interconnect with CIG's proposed Totem Storage facility and the existing affiliated storage facility of Young Storage but not to Windy Hill's proposed storage facility.¹⁴ CIG and PSCo filed motions for leave to answer and answers to Marathon and Windy Hill. Windy Hill filed an answer to CIG's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to

¹¹ 18 C.F.R. § 385.214 (2007).

¹² See 18 C.F.R. § 385.214(d) (2007).

¹³ Marathon's protest was originally filed jointly by Marathon and BP as the Indicated Shippers. On July 2, 2007, BP withdrew its participation in that protest. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure, BP's request to withdraw from this pleading has been granted by operation of law and requires no further action on the part of the Commission. 18 C.F.R. § 385.216(b) (2007).

¹⁴ Windy Hill explains that it is currently constructing a gas storage facility in Morgan County, Colorado, pursuant to a certificate issued by the Commission on May 19, 2006. *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006).

protests or answers,¹⁵ the Commission finds good cause to waive Rule 213(a)¹⁶ and admit the answers provided by CIG, PSCo, and Windy Hill because they provide information that has assisted us in our decision making.

IV. Discussion

22. Since the application filed by CIG proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

23. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.¹⁷ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

24. Under this policy, the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing expansion projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect 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 the new

¹⁵ 18 C.F.R. § 385.213(a)(2) (2007).

¹⁶ See section 385.101(e) (permitting the Commission to waive any provision of Part 385 for good cause).

¹⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order clarifying policy*, 90 FERC ¶ 61,128 (2000); *order clarifying policy*, 92 FERC ¶ 61,094 (2000) (Policy Statement).

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 proceed to complete the environmental analysis where other interests are considered.

25. CIG's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As explained below, we are approving CIG's proposal to recover the costs of the expansion project through separate incremental rates based on our finding that the proposed facilities will not be integrated with CIG's existing system. Thus, existing customers will not bear any of the costs of the project nor will they subsidize the High Plains Expansion Project.

26. The project will not adversely affect CIG's existing customers, or other pipelines and their customers. The proposed facilities are designed to provide incremental service without degradation of service to CIG's existing firm customers. In addition, CIG's project is designed to meet new residential and electric generation demand and there is no evidence that service on other pipelines will be displaced or bypassed. As explained below, we also find that CIG's proposed services are in accord with Commission policy and do not place third party storage providers at a competitive disadvantage. Thus, we conclude that CIG's proposal will not have adverse impacts on existing pipelines or their customers.

27. CIG has designed the High Plains Expansion Project to minimize the impact on landowners and the environment. CIG states that approximately fifty percent of the pipeline route is along existing utility rights-of-way. CIG also states that it has been actively working directly with affected landowners on adjusting its route where possible to accommodate the landowners' concerns.

28. CIG has entered into long-term precedent agreements for 100 percent of the design capacity of the project. CIG's proposal will provide needed transportation infrastructure for the expansion customers in order to meet increased demand for residential and commercial heating and gas-fired electric generation along the Colorado Front Range. The project will also provide PSCo with a flexible short-notice transportation service to support its wind project developments in the area. Based on the benefits that CIG's proposal will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find that approval of the High Plains Expansion Project is required by the public convenience and necessity.

B. Lease Agreement with WYCO

29. As discussed above, CIG proposes that WYCO finance and own the High Plains facility. CIG will construct the facilities and WYCO shall lease the facilities to CIG effective upon the date the facilities are ready to be placed in service. For the following reasons, we find that CIG's request to lease capacity from WYCO will be required by the public convenience and necessity and will be granted.

30. The Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline. To enter into a lease, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity and operate the facilities. Once acquired, the lessee in essence owns that capacity, and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may, in some instances, remain the operator of the pipeline system, no longer has any rights to use the leased capacity. As a passive owner, WYCO does not require a certificate.¹⁸ The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the charges for service under the lease are less than, or equal to, the charges for comparable service on the same facilities; and (3) the lease arrangement does not adversely affect existing customers.

31. We find that approval of the lease agreement is consistent with the cited Commission policy. For the term of the Lease Agreement, CIG will have operational control of the facilities and will provide natural gas transportation service to the expansion customers, as well as to potential future customers, consistent with the terms of its proposed rate schedules and tariff. No current transmission service will be affected by the proposal. Under the lease agreement, CIG's monthly lease payment is designed to replicate the impact on the cost-of-service that would result from the direct ownership of the facilities by CIG. Thus, there is no cost impact to CIG's shippers resulting from CIG leasing these facilities rather than owning these facilities.

32. Upon termination of the lease at the end of its term or otherwise, CIG must continue to provide jurisdictional service on the High Plains facilities until it requests and is authorized to abandon the facilities under NGA section 7(b). Similarly, if WYCO

¹⁸ See, e.g., *Northwest Pipeline Corp.*, 121 FERC ¶ 61,158, at P 11 (2007); *Dome Pipeline Corp.*, 22 FERC ¶ 61,277 (1983).

elects to operate the facilities, it must file for and receive certificate authority under NGA section 7(c).

C. Request to Re-functionalize Certain Facilities

33. As explained herein, CIG proposes to re-functionalize a portion of its existing Crazy Horse Lateral and its Blue Spruce Lateral from CIG's mainline service to service under the High Plains rate schedules. CIG has adequately explained that re-functionalizing these facilities will not adversely affect service to existing shippers taking service on its mainline system and will avoid the necessity of constructing additional interconnection facilities. For these reasons, we approve CIG's request.

D. Interconnection Requirements

34. As explained above, CIG proposes to construct interconnections with Young Storage and its proposed Totem Storage project as part of its High Plains Expansion Project. The costs of these interconnection facilities are included in the calculation of the proposed initial rates for service on the High Plains facilities.

35. Windy Hill complains that CIG's proposal to construct free interconnects with Young Storage and CIG's proposed Totem Storage project places independent storage providers at a significant disadvantage. Windy Hill requests that the Commission reject CIG's proposal to construct interconnections with Young Storage and Totem Storage unless CIG undertakes to provide a similar interconnection for Windy Hill.

36. CIG responds that Windy Hill never requested an interconnection and it is not obligated to propose interconnections with entities that have not requested such interconnections. CIG states it will respond to a request if and when one is made.

37. As set forth in *Panhandle Eastern Pipe Line Company*,¹⁹ a pipeline is required to permit a party to obtain an interconnection if the party satisfies five conditions: (1) the party seeking the interconnection must be willing to bear the cost of construction of the interconnection; (2) the proposed interconnection must not adversely affect the pipeline's operations; (3) the proposed interconnection and resulting transportation must not diminish service to the pipeline's existing customers; (4) the proposed interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish an interconnection with the pipeline's existing facilities; and (5) the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any other contractual

¹⁹ 91 FERC ¶ 61,037 (2000).

obligations with respect to the interconnection facilities. Consistent with this policy, if Windy Hill makes a request to interconnect its facilities with High Plains that meets these conditions, CIG must permit the interconnection. CIG can agree to bear some or all of the costs of the interconnection where it reasonably determines there are shipper commitments and charges that provide an adequate economic basis for the connection or otherwise creates commercial opportunities or other benefits for CIG's operations.²⁰

E. Proposed New Services and Rates

38. CIG asserts that the High Plains pipeline was designed as a stand alone, operationally distinct, incrementally priced delivery system separate from the existing mainline system. Therefore, CIG proposes to add six new rate schedules for services specific to the proposed High Plains Project to its FERC Gas Tariff.

Unbundled Transportation Services

39. CIG proposes to offer firm and interruptible transportation service under Rate Schedules TF-HP and TI-HP, respectively. These services will be available on a ratable basis up to the contracted service quantity from any receipt point to any delivery point on the High Plains system. CIG proposes to establish incremental firm and interruptible rates for transportation service based on the cost of the High Plains facilities. A shipper on CIG's mainline that also uses the High Plains facilities on an alternate or secondary basis will be required to pay an incremental rate for quantities shipped on High Plains.

Unbundled Storage Services

40. CIG proposes to offer firm and interruptible storage service under Rate Schedule FS-Y and IS-Y, respectively. The terms and conditions of service are the same as the requirements found in Young Storage's FERC Gas Tariff. The storage service will be provided utilizing storage capacity CIG acquires in Young Storage through capacity release transactions. In order to utilize service under Rate Schedules FS-Y and IS-Y, a shipper must have executed a TF-HP or TI-HP Agreement providing transportation on High Plains' facilities for the injection and withdrawal of quantities from Young Storage. The available daily injection quantity, daily withdrawal quantity, and storage entitlements are subject to section 44 of the GT&C of CIG's tariff and will be stated on CIG's electronic bulletin board.

²⁰ See section 27.6 of the GT&C of CIG's FERC Gas Tariff. See also section 154.109(b) of the Commission's regulations.

One Hour Storage and Transportation Balancing Service

41. CIG will offer a one-hour notice transportation and storage service under Rate Schedules TSB-Y. This firm service will be provided using the combination of existing firm storage capacity on the Young Storage system and High Plains' transportation capacity. Under this proposed rate schedule, shipper nominations may be made up to one hour before the gas is dispatched. In order to contract for TSB-Y service, a shipper must hold both firm transportation capacity on High Plains and firm storage capacity on Young Storage.

Swing Service

42. Rate Schedule SS-HP is a swing service that provides High Plains' delivery point operators the ability to accommodate daily imbalance activity. CIG states that this service is similar to CIG's existing Rate Schedule SS-1 and will allow a High Plains' operator flexibility to avoid penalties.

43. The Commission will approve CIG's proposed services and initial rates as conditioned below.

1. Incremental Transportation Rates

44. As discussed above, CIG proposes to establish separate incremental rates for transportation service on the High Plains Expansion facilities under Rate Schedules TF-HP and TI-HP. CIG claims this rate treatment is supported because the proposed project is a stand-alone system which is operationally distinct from the existing CIG system. CIG states that gas that flows on the High Plains system will be independent of the flows on the CIG mainline, and vice versa. CIG also explains that the High Plains system will only be physically connected to the existing CIG system at the GQC facilities at the Watkins Compressor Station which are also priced incrementally, so there is no mainline integration or rolled-in pricing issues impacted by such physical interconnection. According to CIG, the gas air-blending facilities will only add air to the High Plains system to maintain an appropriate Wobbe factor. Thus, CIG concludes there is not a physical commingling or integration that will occur at the incrementally priced GQC facility.

45. PSCo supports CIG's proposal to charge separate incremental rates for service on the High Plains facilities. It asserts that incremental rates are consistent with the Policy Statement because the High Plains system does not depend on the cheap expansibility of existing capacity nor will it be operationally integrated with CIG's system other than for a shared air blending facility.

a. Marathon's Protest

46. Marathon asserts that CIG's proposal for separate incremental rates is unjust, unreasonable and unduly discriminatory to shippers on CIG's existing system. Marathon asserts that the Commission's Policy Statement requires a pipeline to use its existing maximum Part 284 rate as the initial recourse rate if the calculated incremental recourse rate is less than the Part 284 rate.²¹ Conversely, Marathon claims that the Commission will approve incremental rates for an expansion project only if the incremental rates would be higher than the existing system-wide rates.²² Here, Marathon points out that CIG's existing system rate (\$0.3344 per Dth on a 100 percent load factor basis) is 2.7 times higher than the proposed incremental rate (\$0.1238 per Dth on a 100 percent load factor basis).

47. Marathon also maintains that the expansion project is a loop of CIG's existing system which permits construction and operation of the expansion project at a substantial savings as compared to the cost that would result from an entirely new non-affiliated pipeline. In support, Marathon states that the flow of gas on the expansion project will be from the Cheyenne Hub southward into the Denver market, and the other major segment of the project extends northeasterly from the Watkins Compressor Station to CIG's Ft. Morgan storage field and the storage facilities operated by CIG's affiliate, Young Storage. In addition, Marathon states that the Watkins-Young segment is directly adjacent to CIG's existing system. It also asserts that the Cheyenne South segment, while not directly adjacent to the existing mainline, will still function as a loop of the existing mainline because CIG will be able to move gas between the expansion facilities and CIG's Watkins South mainline to support operations on the expansion project. While the expansion project does not include the installation of new compressor stations, Marathon claims that the expansion facilities will potentially benefit from interconnections with CIG's Cheyenne and Watkins Compressor Stations. In addition, Marathon states the fact that CIG solicited turnback capacity in the open season is evidence that the two systems are interrelated.

48. Marathon also argues it is unclear whether the primary expansion shipper, PSCo, contracted for capacity that is incremental to all its current MDQ on CIG's existing system or whether PSCo intends to reduce its existing MDQ as its contracts expire²³ or

²¹ *Citing Trunkline Gas Co.*, 119 FERC ¶ 61,078, at P 24 (2007) (*Trunkline*).

²² *Citing Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,075, at P 18 (2006).

²³ Marathon states that PSCo's firm transportation contracts will be expiring within five years of the anticipated August 2008 in-service date of the project.

instead rely on the expansion facilities for its transportation needs. To the extent that the expansion capacity does not represent incremental demand, Marathon is concerned that throughput on CIG's existing system could face a dramatic decline to the detriment of the remaining shippers. In this regard, Marathon claims that weather normalized sales growth was just 0.2 percent in 2005, was a negative 2.8 percent in 2006, and sales are expected to drop between 1.0 percent and 2.0 percent in 2007.²⁴

49. Marathon claims that expansion shippers would have a prohibitive competitive advantage if they are permitted to pay rates that are just one-third the rate that existing system shippers pay for transportation on essentially the same flow path. For example, Marathon states that PSCo competes with numerous marketers to serve large commercial and industrial customers and the low rate that CIG offers PSCo for transportation on the expansion project would give PSCo an undue preference for competing for this load.

50. Finally, Marathon requests that the Commission make a preliminary determination that the project costs should be rolled in in CIG's next rate case. According to Marathon, this is justified and consistent with Commission precedent²⁵ because revenues exceed the costs of the project in the aggregate over a ten-year period by \$54.16 million.

b. Responses to Marathon's Protest

51. CIG answers that its incremental rate proposal is in accord with Commission policy, which favors incremental rates over rolled-in rates except in two situations, both of which are not applicable in the present case. Specifically, CIG asserts that this is not a case where a pipeline has vintages of capacity and charges shippers different rates for the same service under incremental pricing nor is it a case of cheap expansibility that is made possible because of earlier costly construction. According to CIG, the Commission explicitly has distinguished the pricing considerations affecting a separate lateral from those affecting a mainline expansion. For separate laterals, CIG maintains that the Commission has approved incremental rates for expansion projects that are lower than the systemwide rate in a number of cases.²⁶

²⁴ Citing SEC Form 10-K filed in 2007 Xcel Energy, PSCo's parent.

²⁵ Citing *Dominion Transmission, Inc.*, 101 FERC ¶ 61,047 (2002) (*Dominion*).

²⁶ Citing *Wyoming Interstate Co., Ltd.*, 107 FERC ¶ 62,124 (2004); *Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,096, at 61,287 (2001); *El Paso Natural Gas Co.*, 90 FERC ¶ 61,126 (2000).

52. CIG disagrees with Marathon's assertion that the High Plains system is a loop of CIG's existing mainline. CIG contends that the two systems will be operationally distinct and gas will not flow on the High Plains system to support operations (such as avoiding bottlenecks) on the CIG system and vice versa. CIG also states that the High Plains system will use no pipeline segments from the existing mainline system and thus is akin to a pipeline lateral or a completely separate system.

53. Furthermore, while the High Plains facilities will interconnect with the existing Fort Morgan and Watkins Compressor Stations, CIG maintains that no existing compression will be used to facilitate High Plains' receipts or deliveries. In support, CIG explains that the Fort Morgan Compressor Station is only used to compress gas into CIG's Fort Morgan storage field and that facility is functionalized to storage, not transmission. CIG also states that the Watkins Compressor Station is used to compress gas into CIG's mainline and the Valley Line south of Denver.

54. According to CIG, there is one limited interrelationship between the facilities of CIG's existing system and the High Plains facilities; namely, the air blending facilities at the Watkins Compressor Station. CIG states that it intends to install additional air blending facilities as part of the project to enable gas deliveries from the High Plains system to the PSCo East Denver point to meet a new Wobbe factor requirement. However, CIG points out that the air bending facilities are priced incrementally and High Plains deliveries will be assessed an incremental fuel charge to recover the blending facility fuel usage.

55. CIG also states that PSCo's agreement to subscribe to High Plains' capacity does not involve any parallel reduction in capacity rights on the existing mainline system. Further, CIG asserts that whether or not PSCo reduces its existing capacity in the future is mere speculation and not relevant to this proceeding.

56. CIG disagrees with Marathon's claims that High Plains' shippers will have a competitive advantage over existing shippers since the High Plains system is more limited than the existing system in terms of diversity of supplies and markets. In any event, CIG maintains that Marathon had the opportunity to subscribe for the High Plains capacity during the open season and chose not to do so.

57. Similarly, PSCo disagrees with Marathon's contention that incremental rates are not appropriate for the High Plains Expansion Project. Because the High Plains system is a separate system or lateral, PSCo claims that rolled-in pricing would require PSCo to subsidize shippers on the mainline in violation of the Policy Statement's no subsidy requirement. It also states that it is not in a position to transfer its capacity on CIG's existing system to the High Plains system, as Marathon contends. In support, PSCo states that its High Plains capacity will be dedicated to support its renewable generation

which forecloses the possibility of transferring capacity from CIG's existing system to High Plains. PSCo also disagrees with Marathon's assertion that incremental rates would afford expansion shippers a prohibitive competitive advantage over existing shippers, noting that the Commission has rejected the argument that separate rates based on reasoned pricing decisions are inherently unfair or unduly discriminatory.²⁷

c. Commission Determination

58. We find that CIG's proposal to adopt separate incremental rates for the High Plains Expansion Project is supported and consistent with Commission policy. First, we find that Marathon misconstrues the Commission's pricing policy for pipeline expansions in asserting that the Policy Statement requires that a pipeline charge its Part 284 rates for all new facilities where the incremental rate is less than the existing Part 284 rate and that the Commission always will grant a presumption of rolled-in pricing where project revenues exceed costs. This statement is only correct to the extent the new facilities are found to be integrated with the pipeline's existing system. Even under the Commission's previous policies favoring rolled-in pricing, physical integration of the new facilities was always the first issue the Commission examined under the traditional *Battle Creek* standard²⁸ or the Commission's 1995 Pricing Policy Statement.²⁹ As the Commission explained in Opinion 406-A:³⁰

Both *Battle Creek* and the [1995] Pricing Policy Statement contemplate a two-pronged analysis in determining whether facility costs should be rolled in. Under *Battle Creek*, the Commission allowed rolled-in rates where (1) the new facilities would be integrated into the mainline system and (2) would confer some positive systemwide benefit. *TransCanada PipeLines Ltd. v. FERC*, 24 F.3d 305, 308 (D.C. Cir. 1994). Under the [1995] Pricing Policy Statement, the Commission similarly looks "to the extent to which the new facilities are integrated with the existing facilities and to the specific system benefits produced by the project."

²⁷ *Citing order clarifying policy*, 90 FERC ¶ 61,128 at P 61,393.

²⁸ *Battle Creek Gas Co. v. FPC*, 281 F.2d 42 (D.C. Cir. 1960) (*BattleCreek*).

²⁹ *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 (1995), *reh'g denied*, 75 FERC ¶ 61,105 (1996) (1995 Pricing Policy Statement).

³⁰ *Tennessee Gas Pipeline Co.*, Opinion No. 406-A, 80 FERC ¶ 61,070, at 61,209 (1997).

1995 Pricing Policy Statement, 71 FERC at 61,915-6. The [1995] Pricing Policy Statement, however, also directs that “the system benefits must be analyzed in context with the rate increase to existing customers produced by rolled-in pricing.” *Id.* at 61,916.

59. In the most recent Policy Statement, the Commission again modified the second prong of its analysis to further emphasize the cost aspects of a project in determining whether rolled-in pricing was appropriate.³¹ Under the Policy Statement, the Commission seeks to encourage efficient investment and contracting decisions by pipelines and shippers concerning the construction of new capacity. It does this by generally requiring that expansions be priced incrementally, so that expansion shippers will have to pay the full costs of the new capacity without subsidy from the existing customers through rolled-in pricing. The Commission found that rolled-in pricing sends the wrong price signals by masking the true cost of capacity expansions to the shippers seeking the additional capacity. The Commission noted, however, that its new policy would not eliminate the possibility that some or all of a project’s costs could be included in determining existing shippers’ rates. The Commission stated that rolled-in pricing could still be appropriate when initial costly expansion results in cheap expansibility.³² In these situations, the Commission’s practice has been to grant a predetermination of rolled-in rate treatment where the incremental revenue from a proposed project will exceed the incremental cost-of-service.³³

60. However, under the Policy Statement the Commission continues its long-standing policy of pricing non-integrated, stand-alone projects or projects involving laterals that serve a single or limited number of customers at separate incremental rates based on the cost of the facilities. In these situations, the rate is an additive rate and the rate can either be lower or higher than the system-wide rates. Transportation on the incrementally priced facilities is limited to those facilities, i.e., the policy on flexible receipt and

³¹ Policy Statement, 88 FERC ¶ 61,227 at 61,746-47.

³² The Commission also indicated that project expansion costs could still be included in existing shippers’ rates when construction projects are designed to improve service for existing customers and stated that a form of rolled-in pricing could be applied as shippers exercise their right of first refusal. Marathon does not seek a predetermination of rolled-in pricing for the High Plains facilities based on these circumstances.

³³ See, e.g., *Northern Natural Gas Co.*, 119 FERC ¶ 61,111, at P 22 (2007); *North Baja Pipeline, L.L.C.*, 117 FERC ¶ 61,022, at P 37 (2006).

delivery points to access other portions of CIG's system does not apply without an additional charge and vice versa.³⁴

61. Therefore, the central issue in this proceeding is whether the High Plains facilities are integrated physically and operationally with the existing mainline system. We find that Marathon's assertion that the High Plains Expansion Project is integrated with CIG's existing system because it is a loop of CIG's existing system is not supported on the basis of this record. As designed, the High Plains system will not use any existing pipeline segment on CIG's mainline system and there are no interconnections between the facilities that would allow gas to flow from one system to another. Nor will the existing compression facilities on CIG's mainline system be used to effectuate High Plains' receipts and deliveries. Rather, the operation of the High Plains system will be driven by the pressure supplied by the interconnecting pipelines, whether from the compression of Rockies Express, WIC or Cheyenne Plains at the Cheyenne Hub or from the storage facilities of Young Storage.

62. The only interrelationship between the High Plains Expansion Project and CIG's existing system is the Watkins air blending facilities which will be utilized to meet certain gas quality standards. However, these facilities are incrementally priced to existing shippers and will also be incrementally priced to High Plains' shippers that use the air blending facilities. In addition, High Plains' shippers will pay the fuel associated with the use of the air blending facilities.³⁵ Thus, both CIG's existing and expansion shippers will be responsible for their proportional share of the costs of the air blending facilities.

63. We also find that the case precedent Marathon cites to support its position that the Policy Statement requires that a pipeline charge its Part 284 rates for all new facilities where the incremental rate is less than the existing Part 284 rate and that the Commission will grant a presumption of rolled-in pricing in all instances where project revenues exceed costs are inapposite. In contrast to CIG's proposal here, the *Trunkline* and *Dominion* proceedings involved new expansion facilities that were integrated with the existing pipeline systems. In *Trunkline*, the pipeline proposed a 45-mile loop of its existing system.³⁶ The *Dominion* proceeding involved a proposed lease of capacity that

³⁴ See *Wyoming Interstate Co.*, 119 FERC ¶ 61,252, at P 20 (2007) (approving separate incremental rates that will be applicable to shippers that utilize the Kanda lateral facilities on a secondary basis).

³⁵ See discussion *infra* at P 105.

³⁶ *Trunkline*, 119 FERC ¶ 61,078 at P 3.

the Commission found qualified as inexpensive expansibility as contemplated by the Policy Statement.³⁷

64. We find that Marathon's additional arguments opposing separate incremental rates for the High Plains facilities are unavailing. Whether PSCo elects to continue service on CIG's existing mainline upon expiration of the terms of its contract is speculative and not relevant to this proceeding. Issues related to de-contracting on CIG's mainline system are more appropriately addressed in any general section 4 rate case in which CIG proposes to shift the costs of any expired contracts, including PSCo's, to the remaining shippers taking service on CIG's mainline. Additionally, we disagree that adoption of separate incremental rates based on the factual record in this proceeding results in an unduly discriminatory and anticompetitive rate treatment vis-a-vis shippers on CIG's existing mainline system. Calculating the rates of stand-alone facilities based on the cost of providing the service is consistent with long-standing Commission policy and fundamental cost causation principles.³⁸

65. For these reasons, we conclude that the High Plains system, as proposed, will not be physically or operationally integrated with CIG's existing mainline system, but is a stand-alone system. Thus, we find that this is not a situation where an inexpensive expansion of facilities was made possible because of prior costly construction. We conclude that CIG's proposal to charge separate incremental rates for the High Plains facilities is appropriate and consistent with Commission policy. However, our ruling is based on the specific facts presented here and is subject to change to the extent CIG modifies the design of the High Plains Expansion Project in the future.

2. Proposed Storage and Storage Related Services under Rate Schedules FS-Y, IS-Y and TSB-Y

66. As discussed above, CIG proposes to offer unbundled storage service under Rate Schedules FS-Y and IS-Y and bundled storage and transportation service under Rate

³⁷ *Dominion*, 101 FERC ¶ 61,047 at P 10.

³⁸ Principles of cost causation require that rates accurately reflect and recover costs. See *Public Service Co. of N.H. v. FERC*, 600 F.2d 944, 959 (D.C. Cir. 1972), cert. denied, 444 U.S. 990 (1979). Such rates should "fairly track the costs for which [the customers] are responsible." *Pa. Elec. Co. v. FERC*, 11 F.3d 207, 211 (D.C. Cir. 1993) (citing *Town of Norwood v. FERC*, 962 F.2d 20, 25 (D.C. Cir. 1992)); *Union Elec. Co. v. FERC*, 890 F.2d 1193, 1198 (D.C. Cir. 1989).

Schedule TSB-Y. In order to provide these services, CIG proposes to acquire capacity in Young Gas storage by entering into capacity release transactions.

a. Windy Hill's Protest

67. Windy Hill asserts that the new storage and storage-related services CIG proposes to offer on the High Plains Expansion Project would unduly favor storage services obtained from CIG's affiliate, Young Storage, over storage services that could be obtained from other storage providers including Windy Hill. Windy Hill maintains that these services, as currently structured, make it difficult, if not impossible, for storage providers other than CIG's affiliate, Young Storage (or other CIG-owned storage), to offer imbalance management and other storage services in the markets that will be served by the project.

68. First, Windy Hill claims that the storage service provided under proposed new Rate Schedules FS-Y and IS-Y, while not overtly bundled, would operate in a manner that is unduly discriminatory and preferential because they would in fact be bundled with firm transportation service on CIG. According to Windy Hill, this is because expansion customers are being offered a "packaged deal" for both transportation and storage capacity, with both to be obtained from CIG. Windy Hill objects to PSCo's release of the storage capacity it holds on Young Storage to CIG, claiming that PSCo could achieve the same result by either using its own capacity in Young Storage, or capacity from another third-party storage provider, in conjunction with its firm transportation rights on the High Plains Expansion Project. Windy Hill asserts that by combining Young Storage services with CIG's transportation service, CIG would deprive these customers of a choice as to storage service providers, even though alternatives to Young Storage, such as Windy Hill, will be available. For these reasons, Windy Hill urges the Commission to require CIG to modify its proposal so that customers must contract for storage services from storage operators, whether they are Young Storage, Windy Hill or others, on an equal footing, and contract separately with CIG for transportation to and from the storage facilities.

69. Second, Windy Hill asserts that CIG's proposal to offer service under Rate Schedule TSB-Y on a bundled basis violates the unbundling and open-access requirements of Order No. 636.³⁹ In addition, Windy Hill claims that CIG's proposal

³⁹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 57 Fed.

(continued)

discriminates in favor of its storage affiliate which violates Order No. 637⁴⁰ and section 284.12(b)(2) of the Commission's regulations⁴¹ which prohibits pipeline actions that would inhibit the development of third-party balancing services. Windy Hill claims that if CIG is permitted to implement this proposed service, Windy Hill and other storage providers that could connect to the High Plains Expansion Project would be at a permanent competitive disadvantage because they could not offer High Plains Expansion Project shippers a package deal similar to that which CIG proposes to offer in conjunction with its affiliate.

70. Windy Hill also claims that Rate Schedule TSB-Y is defective because it offers a service that Young Storage's tariff does not currently permit. In support, Windy Hill asserts that firm storage service offered by Young Storage under Rate Schedule FS-1 does not incorporate an hourly nomination process necessary for CIG to implement its Rate Schedule TSB-Y hourly flexibility.

b. Response to Windy Hill's Protest

71. CIG claims that its proposed services do not discriminate against third-party storage service providers but were designed primarily to meet the requirements of PSCo, the primary shipper supporting the High Plains Expansion Project. CIG explains that PSCo needs access to gas supply on short notice in order to serve PSCo's gas-fired generation in conjunction with wind power currently being developed. Further, CIG explains that PSCo currently holds Young Storage capacity that it intends to release to CIG to provide the short-notice service which will allow PSCo to reduce the cost of the

Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part sub nom. United Distrib. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 117 S. Ct. 1723 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *reh'g denied*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

⁴⁰ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,309 (2000), *order on reh'g*, Order No. 637-A, 65 Fed. Reg. 35,706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000), *reh'g denied*, Order No. 637-B, 65 Fed. Reg. 47,284 (Aug. 2, 2000), 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Assoc. of Am. v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002).

⁴¹ 18 C.F.R. § 284.12(b)(2) (2007).

short-term notice service. Thus, CIG argues that PSCo was not forced to choose short-term service provided in part by capacity from Young Storage; rather CIG structured its service to meet the needs of this customer. CIG also reiterates that CIG's open season and proposed tariff permits shipper to choose between short-notice service and basic firm service.

72. CIG also disagrees with Windy Hill's assertion that it is just as capable as Young Storage of supporting firm hourly flexibility assuming that CIG permits the matching of firm transportation with firm storage withdrawals on an hourly basis. First of all, CIG states that this would be true only if storage capacity at Windy Hill was available, which it is not. Further, CIG states that Windy Hill has not shown that it would be feasible for a shipper to secure short-notice service by making separate nominations on CIG and Windy Hill. CIG explains that whether the storage component of a short-notice transportation service can be provided by a third-party storage provider depends on a number of factors, including whether CIG has the necessary operational controls to perform the service. CIG states that it and PSCo have determined that the best way to perform the service that PSCo desires and ensure that CIG has the necessary operational control to perform the service is for PSCo to release its storage capacity in Young Gas Storage to CIG. CIG states that if and when it is approached to provide a similar short-notice transportation service in combination with a storage service provided by another third-party storage provider, it will undertake the necessary analysis to assure that it retains sufficient operational control to perform the service.

73. Finally, CIG asserts that Windy Hill's contention that Young Storage's tariff does not currently incorporate the hourly nomination process necessary for CIG to provide hourly flexibility is incorrect. CIG states that section 5.7 of the GT&C of Young Storage's tariff provides for non-grid nominations that are defined as nominations for injections or withdrawals at any time of the gas day.

c. Commission Determination

74. For the reasons explained below, we find that Rate Schedules FS-Y, IS-Y and TSB-Y, as proposed, do not violate the Commission's unbundling policies under Order Nos. 636.

75. As an initial matter, CIG's proposal to acquire capacity on Young Storage is consistent with the Commission's policy with respect to pipelines' acquisition of off-system capacity set forth in *Texas Eastern Transmission Corporation (Texas Eastern)*.⁴²

⁴² 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

In *Texas Eastern*, the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates. CIG's tariff incorporates the requisite language in section 41 of the GT&C permitting it to acquire offsystem capacity without prior approval. Moreover, contrary to Windy Hill's contention, the Commission's open-access regulations do not prevent a pipeline from offering both transportation and storage services; rather, they only require the pipeline to offer these services on an unbundled basis. CIG's proposal to acquire Young Storage capacity and offer it under its proposed firm and interruptible storage rate schedules is in compliance with these Commission requirements.

76. We also do not find that CIG's proposed service under Rate Schedule TSB-Y violates the Commission's unbundling requirements under Order No. 636. While Order No. 636 requires pipelines to offer their customers firm and interruptible storage on an open-access, contract basis, the Commission also permits pipelines to offer services, in addition to unbundled storage services, that provide increased flexibility to customers by bundling storage and transportation (e.g., no notice service and enhanced hourly flow service). Here, CIG is proposing to offer an hourly flexibility service, in addition to offering unbundled firm and interruptible storage services.⁴³ This is the same type of service the Commission has found acceptable for other pipelines.⁴⁴

77. For these reasons, we disagree with Windy Hill that CIG's proposals to provide service under Rate Schedules FS-Y, IS-Y, and TSB-Y are inappropriate and will approve them. However, as Windy Hill notes, section 284.12(b)(2)(iii) of the Commission's regulations requires CIG to provide shippers the opportunity to obtain similar imbalance management services from other providers and provide those shippers access to transportation and other service without undue discrimination.

⁴³ We also disagree with Windy Hill's contention that Young Storage's tariff does not currently incorporate an hourly nomination process. As explained by CIG, section 5.7 of Young Storage's tariff permits nominations for injections or withdrawals at any time of the gas day.

⁴⁴ See, e.g., *El Paso Natural Gas Co.*, 114 FERC ¶ 61,290, at P 50-53 (2006); *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289 (2004), *order on reh'g*, 110 FERC ¶ 61,375 (2005); *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,018, at P 33 (2002).

3. Proposed Initial Recourse Rates

78. CIG's proposed incremental firm transportation rates are derived using an annual cost of service of \$40,207,872 and billing determinants of 899,000 Dth/d which is equal to the design capacity of the project. CIG proposes an incremental firm maximum monthly reservation rate (Rate Schedule TF-HP) of \$3.7271 per Dth, which includes an allocation of costs to interruptible service of \$302,000, plus a commodity recourse rate of \$0.0012 per Dth. The proposed maximum interruptible rate under Rate Schedule TI-HP is \$0.1237 per Dth which is the 100 percent load factor equivalent of the firm incremental transportation rate. CIG also proposes to price its interruptible swing service under Rate Schedule SS-HP at the 100 percent load factor rate of Rate Schedule TF-HP.

79. For storage services under Rate Schedules FS-Y and IS-Y using Young Storage capacity, CIG proposes to base the rates on Young Storage's existing maximum and minimum rates. The rates for service under Rate Schedule TSB-Y reflect the combination of transportation and storage rates proposed under Rates Schedules TF-HP and FS-Y.

80. In developing the proposed cost-of-service rates for the new transportation facilities, CIG has utilized the pre-tax return approved by the Commission in CIG's last general rate case.⁴⁵ CIG proposes to depreciate its new gas transmission plant using a 2.86 percent straight-line depreciation rate base upon a 35-year useful life.

81. For both its firm and interruptible transportation services, CIG proposes a retainage rate of 0.15 percent for lost and unaccounted for gas (L&U). The L&U charge on High Plains will not be the same as CIG's existing L&U charge, but will be updated using the same procedures. The L&U charge for High Plains will be adjusted periodically based on actual experience as a part of the fuel tracker filing. CIG states that the proposed L&U charge is consistent with initial rates approved by the Commission for both the Piceance Basin Expansion in Docket No. CP05-54-000 and the Cheyenne Plains Pipeline in Docket No. CP03-302-000. The High Plains system initially will not have compression facilities and therefore the stated fuel rate is zero.

82. The Commission has reviewed CIG's proposed cost of service, allocation, and rate design used to develop its initial recourse rates and finds that they reasonably reflect

⁴⁵ *Colorado Interstate Gas Co.*, 116 FERC ¶ 61,126 (2006).

current Commission policy.⁴⁶ The proposed rate for L&U is also reasonable and is hereby approved.

4. Tariff Issues

a. Unauthorized Overrun Rate

83. CIG proposes to charge a daily unauthorized overrun rate under Rate Schedules TF-HP and TI-HP that is equal to two times the Spot Index Price during a non-critical condition for quantities in excess of a specified level. Marathon complains that this proposed penalty violates the Commission's policy that the authorized rate cannot exceed twice the interruptible transportation rate during non-critical periods.

84. CIG responds that the Commission has accepted a similar unauthorized overrun rate structure as part of CIG's Order No. 637 compliance filing.⁴⁷ CIG asserts that its proposal is appropriate because shippers on CIG can generally avoid unauthorized overrun charges by simply requesting authorized overrun as part of the nomination process. CIG also claims that the unauthorized overrun rate must be high enough, even during non-critical periods, to give shippers an incentive to use the nomination process and not attempt to game the system by simply taking gas without authorization at rates (such as twice the interruptible rate) that are far below market prices. CIG notes that it credits back to its customers the amount of any penalty revenues that it collects that are in excess of its costs, so CIG will not profit from the overrun rate.

85. CIG's proposed penalties for service on the High Plains facilities for unauthorized overruns are higher than those we permitted in the Order No. 637 compliance proceedings of other pipelines. In Order No. 637, the Commission shifted its policy away from one that fosters the use of penalties, to a service-oriented policy that gives shippers other options to obtain flexibility and relies on penalties when necessary to

⁴⁶ CIG requests authority to place each pipeline segment into service as it is completed and proposes to charge its proposed recourse or contract rates, as appropriate. Because CIG intends to place all lines in service within the same general time frame, it asserts there is no need to provide distinctions in rate treatment for the lines. *See* CIG's July 18, 2007 response to Staff Data Request, Question No. 1. Based upon CIG representations, we will approve CIG's request.

⁴⁷ *See Colorado Interstate Gas Co.*, Docket No. RP00-325-005 (July 10, 2003) (unpublished Director letter order).

protect system integrity.⁴⁸ As we said in *Gulf States Transmission Corporation* and subsequent Order No. 637 orders, a pipeline's penalty structure and level should have a relationship to the harm the conduct could likely cause to the system.⁴⁹ We found that pipelines had not adequately justified, in light of our policy stated in Order No. 637, why substantial overrun penalties should apply on non-critical days. During non-critical periods, a shipper who scheduled overrun service would presumably receive the requested service. Assessing a penalty that is many times higher than the authorized rate for failure to request service is excessive when the conduct would not likely cause harm to the system.

86. In those cases, we required pipelines to revise their tariffs so that the current unauthorized overrun penalties are applied only during critical periods. We said that for non-critical periods, a pipeline can propose a more nominal penalty that is sufficient to provide an incentive to nominate overrun volumes but also takes into account the lessened impact such unauthorized overruns will have on the system during non-critical time periods. In *Questar Pipeline Company (Questar)*,⁵⁰ we further refined our policy and found that to comply with Order No. 637's requirements, a pipeline could propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate, that is sufficient to provide an incentive to nominate overrun volumes but also takes into account the lessened impact such unauthorized overruns will have on the system. Alternatively, a pipeline could retain its existing penalty but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

87. CIG's proposed unauthorized overrun penalties of two times the spot price apply during non-critical periods. CIG's proposed maximum authorized overrun rate is \$0.1237 per Dth, the maximum IT rate. Consistent with our rulings in previous Order No. 637 orders, we find that CIG's proposed penalty of two times the spot price is a greater than nominal penalty and therefore unjustified for non-critical periods.⁵¹

⁴⁸ See Order No. 637-A, FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099, at 31,598 (2000).

⁴⁹ 96 FERC ¶ 61,159 (2001) (*Gulf States*); See also *Trailblazer Pipeline Co.* 97 FERC ¶ 61,056, at 61,306 (2001).

⁵⁰ 98 FERC ¶ 61,159, at 61,584 (2002).

⁵¹ See, e.g., *Gulf States*, 96 FERC ¶ 61,159, at 61,696 (a \$2.00 per Dth penalty on *Gulf States*' system is a greater than nominal penalty and therefore unjustified for non-critical periods), *Trailblazer Pipeline Co.*, 97 FERC ¶ 61,056 (2001); *Questar Pipeline*

Therefore, we will require CIG to revise its tariff and propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate, or in the alternative, CIG can retain its existing penalties but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

88. The Commission recognizes that in its orders in CIG's Order No 637 compliance proceeding, we accepted CIG's proposal to adopt an unauthorized overrun rate of two times the monthly spot index price during non-critical periods for its existing system. However, CIG's current penalties for unauthorized overruns for transportation on its existing system are higher than those we permitted on other pipelines, as explained above. Accordingly, pursuant to its authority under section 5 of the NGA, the Commission is instituting a proceeding in Docket No. RP08-190-000, for the purpose of requiring CIG to show cause within 30 days of issuance of this order, why its existing tariff provisions related to the unauthorized overrun rate during non-critical periods are just and reasonable and comport with Commission policy.

b. Changes to Primary Points

89. Proposed Rate Schedules TF-HP (section 2.4) and TSB-Y (section 2.3) provide that CIG will grant a request to change a primary point of receipt or delivery "if the direction of the Gas flow is unchanged, capacity is available, and the change can be made without adversely affecting system operations or other firm obligations at the new or existing Primary Point and the changes do not affect Transporter's rights or Shipper's obligations with respect to Operational Flow Orders discussed in Article 7 of the General Terms and Conditions."

90. Marathon protests CIG's proposal to restrict primary point changes to changes that do not involve a change in the direction of flow. Marathon claims that this provision would limit shippers' segmentation rights even where the transaction was operationally feasible in contravention of Commission policy.⁵² Marathon requests that the Commission reject this restriction because it unduly restricts a shipper's ability to maximize use of its capacity.

Co., 98 FERC ¶ 61,159, at 61,584 (2002) (a \$10.00 per Dth unauthorized overrun penalty is not justified on non-OFO days).

⁵² *Citing* 18 C.F.R. § 284.7(d) (2007) (requiring a pipeline to permit a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible).

91. CIG claims that Marathon has misread the proposed tariff sheets, asserting that the proposed provision addresses changes in primary points, not segmentation. CIG states that segmentation is dealt with in section 2.3 and contends that no such limitation on shipper's ability to segment is included there. CIG also asserts that the proposed limit on changes in primary points to those involving the same direction of gas flow is the same as found in CIG's existing tariff⁵³ and is necessary because CIG may not be able to operationally accommodate a requested change in the direction of gas flow. Finally, CIG claims that the Commission recognized that such limits on primary point changes are appropriate in *Columbia Gulf Transmission Company*.⁵⁴

92. In Order No. 636 the Commission sought to create competition in the sale of capacity between the pipeline and shippers through, among other things, expanding shippers' rights to include the right to change firm delivery and receipt points. The Commission determined that shippers have the right to change primary points, provided capacity is available, and that shippers may change to any point within the zone for which they are paying.⁵⁵ This policy applies to segmented transactions as well. Under the *Texas Eastern/El Paso* policy,⁵⁶ each shipper in a capacity release is treated as a separate shipper with the same flexible point rights as any other shipper, including the right to change primary points within the zone for which they are paying. Therefore, in a segmented capacity release, both the releasing and replacement shipper are able to change to other primary points in the zone for which it is paying.

⁵³ Citing section 2.4 of Rate Schedule TF-1, section 2.3 of Rate Schedule NNT-1, and section 2.2(a) of Rate Schedule TF-4.

⁵⁴ 100 FERC ¶ 61,344, at P 37-40 (2002).

⁵⁵ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol*, Order No. 636, FERC Stats. and Regs. ¶ 30,939 at 30,428-29; Order No. 636-A, FERC Stats. and Regs. ¶ 30,950, at 30,582-83 (1992); *ANR Pipeline Co.*, 97 FERC ¶ 61,323, at 62,482 (2001); *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,053, at 61,192 (2000).

⁵⁶ *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,100, at 61,452 (1993); *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311, at 62,991 (1993).

93. The Commission continued this policy in Order No. 637.⁵⁷ As the Commission explained in Order No. 637-A,⁵⁸ if replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would still retain the right to sell that point capacity on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented release transactions. Thus, the Commission found that “in order to equalize competition between pipeline and released capacity, pipelines need to permit shippers greater flexibility in selecting primary points . . .” and required pipelines to justify any restrictions on shippers’ ability to use additional primary points in capacity release transactions and other segmented transactions.

94. In certain Order No. 637 compliance filing proceedings, including CIG’s, the Commission permitted the pipeline to place limitations with regard to segmentation and the selection of primary points based on the reticulated nature of the pipeline’s operations.⁵⁹ While noting its preference for assigning primary scheduling priority to segmented transactions, the Commission accepted CIG’s segmentation and primary point proposal where segmentation rights are subject to a one-foot-in bounds rule⁶⁰ due to the reticulated nature of CIG’s operations. However, as explained by CIG in this proceeding, the High Plains facilities are discrete from and operate separately and independently from its mainline system. Accordingly, we find that CIG has not adequately supported this restriction on its High Plains facilities. Accordingly, we will require CIG to either: (1) remove the limit on primary point changes to those involving the same direction of gas flow when it files its actual tariff sheets as required by this order; or (2) file an explanation within thirty days of this order justifying why the operational characteristics of the High Plains system prevents CIG from allowing shippers, including releasing and replacement shippers, to change primary points that involve a change in the direction of flow.

⁵⁷ Order No. 637 at 31,302.

⁵⁸ Order No. 637-A at 31,594.

⁵⁹ *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321, at 62,118 (2001). *See also ANR Pipeline Co.*, 104 FERC ¶ 61,320, at P 15-19 (2003); *National Fuel Gas Supply Corp.*, 96 FERC ¶ 61,182, at 61,808 (2001).

⁶⁰ The one-foot-in bounds rule permits segmentation that has at least a receipt or delivery point within the shipper’s path.

c. Rate Adjustment Provision

95. The proposed new High Plains rate schedules allow CIG to adjust the rate applicable to any shipper as follows:

[s]ubject to the terms of the agreement, Transporter reserves the right to prescribe and/or to adjust at any time any of the rates applicable to any individual Shipper without adjusting any other rates for that or another Shipper, provided, however, that such adjusted rate(s) shall not exceed the applicable maximum recourse rate(s) nor shall they be less than the applicable minimum recourse rate(s), set forth from time to time on the Schedule of Rate Sheets of this Tariff.

96. Marathon claims that the proposed tariff language allows CIG to change at anytime the discounted rate that an existing shipper is paying, unless the change is specifically prohibited by the shipper's transportation contract. Marathon requests that the Commission require CIG to modify this provision to limit CIG's ability to unilaterally increase discounted rates to those instances where the service agreement specifically grants this right to CIG. Marathon maintains that its request is consistent with the Commission's ruling in *Missouri Interstate Gas, LLC (Missouri Gas)*.⁶¹

97. CIG responds that a substantially identical version of this provision has been contained in CIG's existing tariff for years. CIG explains that the language allows CIG to set or adjust a shipper's rate unless such action is contrary to the terms of the shipper's contract. For example, CIG states that this provision would permit CIG to set a new rate when the term of a specified discount rate expires which is consistent with the Commission's policy that discounts are strictly limited to the period for which they are granted. CIG also explains that the provision does not give the pipeline the right to change a shipper's discount rate in a manner that is inconsistent with the contract because the right to adjust rates is expressly "[s]ubject to the terms of the Agreement." Further, CIG explains that in the absence of such a generally applicable provision contained in its tariff, which is incorporated in each service agreement, CIG would be required to add such a provision to each shipper's contract which would be cumbersome and serve no useful purpose.

98. We find that CIG has adequately justified the proposed provision. The proposed language is necessary to permit CIG to set a new rate when a discount rate expires or is

⁶¹ 119 FERC ¶ 61,074 at P 85 (2007) (finding that the provision appears to provide transporter with the ability to arbitrarily increase any discounted agreement to the maximum rate).

no longer applicable. However, a rate adjustment is only permitted if it is not inconsistent with the service agreement. For this reason, CIG cannot arbitrarily adjust the rate at any time which was the Commission's concern in *Missouri Gas*, cited by Marathon. Additionally, CIG's approach of including generally applicable provisions in the tariff, rather than in individual service agreements, is consistent with the Commission's regulatory practice.

d. Confiscation of Gas Provisions

99. Proposed Rate Schedules FS-Y, TSB-Y, and IS-Y provide that if a customer fails to withdraw its storage gas in response to a CIG directive, CIG can confiscate the gas without charge.

100. Marathon asserts that confiscation is much too harsh a penalty and is inconsistent with Order No. 637's directive that penalties "must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems."⁶² Marathon asserts that confiscation of gas does not alleviate in any manner the operational burden, if any, that might be caused by the shipper's failure to withdraw the gas. Therefore, Marathon maintains that if a shipper fails to withdraw its gas in response to a CIG directive, and the withdrawal is justified by operational factors, there should be a penalty, but the shipper should not be deprived of the entire value of the gas that is the target of the withdrawal directive.

101. CIG responds that the proposed tariff language is identical to the provisions of its existing tariff and is supported. CIG notes that by taking title to the gas, it is able to withdraw it from storage and use it or sell it under its operational gas authority when necessary for operational reasons. CIG also maintains that the Commission has approved similar provisions that provide pipelines the right to confiscate gas when operationally necessary to protect system integrity or service to shippers.

102. Consistent with our rulings in prior cases,⁶³ we find that the confiscation of gas improperly left on the system is an operationally justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers. Contrary to Marathon's assertion, confiscation of gas improperly left on the system will enable CIG

⁶² Citing Order No. 637 at 31,314.

⁶³ See, e.g., *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at 51-56 (2007); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 46 (2004); *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164, at 61,728-29 (2001).

to take title to the gas and use or sell it under its operational gas authority in section 37.1 of the GT&C in order to alleviate any adverse operational impact. Consistent with our policy on penalty revenues, CIG must credit the value of the confiscated gas to existing customers. In this regard, CIG proposes to modify section 33.4 of its GT&C which requires CIG to credit the value of such gas to include new rate schedules TSB-Y, SS-HP and IS-Y, but has omitted a reference to Rate Schedule FS-Y. CIG is directed to include a reference to Rate Schedule FS-Y in section 33.4 when it files its actual tariff sheets as required by this order.

e. Gas Quality Provisions

103. In order to meet local distribution companies' operational requirements, CIG's current tariff (section 9.8 of the GT&C) requires all gas delivered to Valley Line Delivery points⁶⁴ be blended to meet a Wobbe factor of 1,200 plus or minus 6.2 percent with a permissible variance of up to 7.8 percent on an hourly basis. Shippers delivering gas to these Valley Line Delivery points are assessed a GQC surcharge which is designed to recover the cost of the air blending facilities used by CIG to meet these gas quality standards.⁶⁵ CIG explains that PSCo has requested a different Wobbe factor for service to the new east Denver delivery point using the High Plains facilities and to Line No. 9B.⁶⁶ Therefore, CIG proposes to revise section 9 of the GT&C to require that gas delivered to High Plains' Derby Lake Delivery Point and Line No. 9B be treated in order to meet a Wobbe factor of 1,200 plus or minus 6.2 percent with a permissible temporary variance of up to 12.7 percent on a daily basis. The treatment of the gas will require the construction of additional air blending facilities at Watkins Compressor Station. The gas transported on the High Plains facilities that require air blending at Watkins Station will be assessed CIG's existing GQC surcharge for the cost of the blending.

104. Shippers utilizing the Watkins Station air blending facilities for deliveries to the East Denver area will also be assessed an incremental GQC fuel charge of 0.51 percent to reimburse CIG for the additional fuel required to blend the High Plains gas. CIG

⁶⁴ The Valley Line is defined in section 1.117 of the GT&C. In general, the Valley Line begins at CIG's Watkins Compressor Station in Adams County, Colorado, and extends southward to the Campo Junction in Baca County, Colorado.

⁶⁵ The terms and conditions related to the GQC surcharge are stated in section 20 of the GT&C of CIG's FERC Gas Tariff.

⁶⁶ Line 9B is an existing pipeline segment on the Valley Line.

explains that this separate fuel charge is necessary because there is no compression equipment on the High Plains system and therefore, no system-wide fuel rate.⁶⁷ CIG has calculated the High Plains blending fuel charge using historical fuel use on CIG mainline system for calendar year 2006 and asserts the fuel charge will prevent any subsidization from CIG's existing shippers.

105. The Commission finds that CIG's proposed gas quality standards for deliveries to High Plains' Derby Lake Delivery Point and Line No. 9B are appropriate in order to meet the operational needs of PSCo. We also find that CIG's proposal to assess its existing GQC surcharges for quantities of gas that are transported through the Watkins air blending facilities using the High Plains facilities and the associated fuel charge are reasonable and therefore are approved.

F. Environmental Analysis

106. The Commission issued a draft environmental impact statement (EIS) addressing CIG's proposal on August 10, 2007. The Commission issued the final EIS on December 28, 2007. The United States Environmental Protection Agency (EPA) prepared a *Notice of Availability of the Final Environmental Impact Statement for the Proposed High Plains Expansion Project* dated January 8, 2008. The draft and final EIS were mailed to federal, state, and local agencies, elected officials, Native American tribes, newspapers, public libraries, interveners to the FERC proceeding, and other interested parties (i.e., landowners, other individuals, and environmental groups who provided scoping comments).

107. The final EIS addressed purpose and need, alternatives, geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, socioeconomics, cultural resources, air quality and noise, safety, and cumulative impacts. The final EIS addressed comments from three individuals who attended the public meeting held on August 28, 2007, and 11 comment letters filed in response to the draft EIS. The commenters' primary concerns related to impacts on agriculture, wildlife, vegetation, land use, surface water resources, and threatened and endangered species; and alternative pipeline routes.

108. Based on information provided by CIG and further developed by field investigations, literature research, alternative and route variation analyses, and contacts with federal, state, and local agencies and individual members of the public, the final EIS

⁶⁷ On CIG's existing system, the fuel used for gas quality treatment purposes is recovered through CIG's system-wide fuel rate.

determined that construction and operation of the High Plains Expansion Project would result in limited adverse environmental impact.

109. During the environmental staff's site visits and through examination of the maps provided by CIG for the project, abandoned mines were noted near the construction workspaces along Line 250A between MPs 49.6 and 51.7. According to Colorado Geological Survey personnel, the main hazard associated with the abandoned coal mines is accidental entrapment in an open shaft or inadequately closed shaft. Therefore, the final EIS recommends that CIG identify and show the locations of mine shafts within 100 feet of construction workspaces on their construction alignment sheets and mark their locations in the field with appropriate signage and fencing.

110. About 59 percent of the land use affected by the project is agricultural, about 39 percent is open range, about 1 percent is industrial, less than 1 percent is forested, and less than 1 percent is wetland.⁶⁸ To address landowner comments about project impacts on agriculture, CIG will coordinate project construction and restoration with affected landowners and will monitor crop productivity for at least two years following restoration. Commenters were concerned that project construction may interrupt or damage irrigation systems; both pivot irrigation and surface irrigation are used in the project area. CIG will repair these systems if they are damaged so that they may function at their pre-construction levels. Commenters were concerned that there may be subsidence over the trench and that this may interfere with pivot irrigation. CIG will use water packing during backfilling the trench in irrigated agricultural areas to minimize subsidence over the trench. This technique involves backfilling the trench to the top of the pipe and then saturating the trench with water to compact the soil around the pipe. Successive layers of soil are compacted in this way (or by mechanical means) until the trench is completely backfilled, thereby reducing the likelihood of trench subsidence which may interfere with pivot irrigation systems and farming across the pipeline. Restoration of areas disturbed by construction will be accomplished in accordance with CIG's Reclamation Plan and its Plan and Procedures (which are based on the Upland Erosion Control, Revegetation, and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures).

111. The Colorado Department of Natural Resources, Division of Wildlife (CDOW) recommended that mitigation of construction impact to trees and shrub clumps could be accomplished by the replacement of trees at a ratio of 1:1 and of shrubs at a ratio of one

⁶⁸ About 3.9 acres of wetlands will be affected by construction and about 1.8 acres of wetlands will be within the permanent pipeline right-of-way. No forested wetlands will be affected by the project.

square foot to one square foot. Options for plantings would include cottonwood, plum, chokecherry, other cherry, wild grapes or other species producing fruits or mast. The CDOW also recommended that special attention should be paid to avoiding removal of or negative impact to all mature cottonwood trees. CIG states it will avoid removal of cottonwood trees over 12 inches in diameter at breast height where practicable. CIG states that the removal of trees and shrubs in the riparian corridors along the pipeline construction right-of-way at both crossings of the South Platte River will be recorded by species and number of individuals by a qualified environmental inspector or biological monitor. Native stock will be ordered based on this survey and replanted the following spring at a ratio of 1:1 in a manner consistent with the CDOW recommendation. Trees will not be planted within 10 feet of the pipeline centerline, but will be replanted in the disturbed areas where they were removed. Consistent with the CDOW recommendation, CIG has developed a Tree Planting Plan. Implementation of the construction and restoration measures in CIG's Plan, Reclamation Plan, and the Tree Planting Plan will minimize impacts on vegetation due to construction and operation of the project.

112. CIG developed an Invasive Species Plan that prescribes methods to prevent and control the spread of noxious weeds during and following construction. We believe that CIG's Invasive Species Plan would minimize the spread of noxious weeds to the greatest extent practicable. However, we are requiring CIG to revise its Invasive Species Plan to increase monitoring of invasive species from 3 years to 5 years based on comments from the USEPA to assess the success of controlling the spread of noxious weeds.

113. Thirteen federally listed species were determined to potentially occur in the general vicinity of the counties crossed by the proposed project (we note that the bald eagle was removed from these 13 species on August 8, 2007, when the bald eagle was removed from the endangered species list). In addition to the federally listed species potentially occurring in the vicinity of the proposed project, the U.S. Fish and Wildlife Service (USFWS) identified six federally listed species and critical habitat for one species in Nebraska that the project may adversely affect as a result of water withdrawals from the South Platte River. Project construction will require the withdrawal of about 92 acre-feet of water from the South Platte River for horizontal directional drilling, dust control, trench compaction, and hydrostatic testing. The final EIS determined that the project will not affect or is not likely to adversely affect the 12 federally listed species potentially occurring in the vicinity of the proposed project in Colorado, but may adversely affect the five species (including critical habitat for one species) in Nebraska.

114. On June 16, 2006, the USFWS issued a programmatic biological opinion (PBO) for the Platte River Recovery Program (PRRIP) and water related-activities affecting flow volume and timing in the central and lower reaches of the Platte River in Nebraska. The action area for the PBO included the Platte River basin upstream of the confluence

with the Loup River in Nebraska and the mainstem of the Platte River downstream of the Loup River confluence. Because CIG proposes to withdraw water from the Platte River Basin, our consultations with the USFWS included species covered in the PBO.

115. The USFWS has determined that any withdrawal of more than 32,585 gallons (0.1 acre-feet) from the river system may affect the river flow quantity and/or timing and may adversely affect these species if not properly mitigated. Therefore, the final EIS determined that the project may adversely affect the following five species: whooping crane (including its critical habitat), interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid.

116. Water-related activities requiring federal approval are reviewed by the USFWS to determine if: those activities comply with the definition of existing water-related activities and/or proposed new water-related activities are covered by the applicable state's or the federal depletions plan. The USFWS has determined that the High Plains Expansion Project meets this criteria, and the biological opinion regarding the effects of the project on the target species, whooping crane critical habitat, and western prairie fringed orchid in the central and lower Platte River can tier from the June 16, 2006 PBO.

117. We initiated formal consultations with the USFWS on August 10, 2007, regarding project impacts on federally listed endangered and threatened species including these water withdrawals and their potential impacts on the identified species and provided them with our final Biological Assessment (BA) for the project on December 4, 2007. On January 22, 2008, the USFWS issued its final biological opinion for the project. It concurs with our determination that water withdrawal from the South Platte River "is likely to adversely affect" the endangered whooping crane, interior least tern, pallid sturgeon, and threatened populations of the piping plover and the western fringed orchid in the central and lower Platte River in Nebraska. It also concurs with our determination of "likely to adversely affect" for designated whooping crane critical habitat in Nebraska. It concurs with our determinations of "not likely to adversely affect" for the endangered American burying beetle, black-footed ferret, least tern, whooping crane, and pallid sturgeon in Colorado; and the threatened piping plover, Ute ladies tresses orchid, Colorado butterfly plant, western prairie fringed orchid, and Preble's meadow jumping mouse in Colorado. It also concurs with our determination of "no adverse modification to critical habitat" for the Preble's meadow jumping mouse.

118. The USFWS states that because CIG has agreed to participate in the PRRIP, ESA compliance for flow-related effects to federally listed endangered and threatened species and designated critical habitat from the project is provided to the extent described in the PBO. The USFWS concludes that the project will result in a new depletion to the Platte River system above the Loup River confluence. This water-related activity is consistent

with those evaluated in the PBO for the whooping crane, interior least tern, piping plover, pallid sturgeon, western prairie fringed orchid, and whooping crane critical habitat, and these effects on flows are being addressed in conformance with the Colorado Plan for Future Development of the PRRIP.

119. The USFWS concludes that the project is consistent for effects to listed species and critical habitat addressed in the PBO. The USFWS concludes that it is its biological opinion that the project, as described, is not likely to jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened northern Great Plains populations of the piping plover or western prairie fringed orchid in the central and lower Platte River. The project is also not likely to destroy or adversely modify designated critical habitat for the whooping crane. This concludes the ESA consultation with the USFWS for the High Plains Expansion Project. Since we have concluded consultation with the USFWS, environmental recommendation 16 in the final EIS has been deleted.

120. The final EIS addressed alternatives, including no action or postponed action; system alternatives; pipeline route alternatives; and route variations. The alternatives analysis in the final EIS found no reasonable route alternatives that would be environmentally preferable to the proposed routes. However, the final EIS recommends using two route variations (the Eaton Ditch and Pioneer Route Variations) to minimize project impact on planned residential developments and to address landowner comments.

121. The final EIS concludes that construction and operation of the proposed project will result in limited adverse environmental impact. As part of the analysis in the final EIS, specific mitigation measures are developed for the construction and operation of the proposed facilities, including a program of environmental inspection and monitoring that is designed to contain most of the impact within the project vicinity and to ensure compliance with certificate and permit requirements. The final EIS concludes that these measures will substantially reduce any environmental impact and further concludes that if this project is constructed and operated in accordance with these mitigation measures, it will be an environmentally acceptable action.

122. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that CIG's project is environmentally acceptable if the project is constructed and operated in accordance with the recommended environmental mitigation measures in the appendix to this order. The Commission adopts the findings and conclusions of the final EIS. We are including the environmental mitigation measures recommended in the final EIS as conditions to the authorizations issued to CIG in this order.

123. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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.⁶⁹

124. At a hearing held on March 20, 2008, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP07-207-000 authorizing CIG to construct and operate the High Plains Expansion Project, and lease capacity from WYCO, as described more fully in the order and in the application.

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

- (1) CIG's completion of 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) CIG's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations; and
- (3) CIG's compliance with the environmental conditions listed in Appendix A to this order.

⁶⁹ 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.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) CIG shall execute firm service agreements equal to the level of service represented in its precedent agreements prior to commencing construction of the High Plains Expansion Project.

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

(E) CIG's proposed initial rates for incremental storage and transportation services for the High Plains Expansion Project are approved. CIG must maintain its records for the expansion project in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(F) In Docket No. RP08-190-000, CIG is directed to show cause within 30 days of this order why its existing tariff provisions related to the unauthorized overrun rate during non-critical periods are just and reasonable and comport with Commission policy.

(G) CIG must file, no less than 30 days, or more that 60 days, prior to commencing service, actual tariff sheets consistent with its pro forma tariff sheets, as modified in this order.

(H) CIG must either: (1) remove the limit on primary point changes to those involving the same direction of gas flow when it files its actual tariff sheets as required by this order; or (2) file an explanation within thirty days of this order justifying why the operational characteristics of the High Plains system prevents CIG from allowing shippers, including releasing and replacement shippers, to change primary points that involve a change in the direction of flow, as discussed in this order.

(I) In Docket No. CP07-207-000, the late motion to intervene of Aquila is accepted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Environmental Conditions for CIG's High Plains Expansion Project

1. CIG shall follow the construction procedures and mitigation measures described in their applications, supplemental filings (including responses to staff data requests), and as identified in the EIS, unless modified by the Order. CIG must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the OEP **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the proposed project. This authority shall allow:
 - a. the modification of conditions of the 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 proposed project construction and operation.
3. **Prior to any construction**, CIG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets and shall include the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, CIG shall file with the Secretary revised detailed survey alignment map/sheets at a scale not

smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

CIG's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. CIG'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. CIG 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, documentation of landowner approval, whether any cultural resources or federal 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 **prior to** construction in or near that area.

This requirement does not apply to route variations recommended herein or minor field realignments per landowner needs and requirements that do not affect other landowner or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of acceptance of the certificate and prior to construction**, CIG shall file an initial Implementation Plan with the Secretary for the review and written approval of the Director of OEP describing how CIG will implement the mitigation measures required by the Order. CIG must file revisions to the plan as schedules change. The plan shall identify:
 - a. how CIG 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 aboveground facility site, 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 materials;
 - d. what training and instructions CIG will give to all personnel involved with construction and restoration (initial and refresher training as the proposed 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 CIG's organizations having responsibility for compliance;
 - f. the procedures (including use of contract penalties) CIG 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. CIG shall file updated status reports with the Secretary **on a weekly basis** until all construction-related activities, including restoration, 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 each spread, work planned for the next 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(s) during the reporting period (both for the conditions imposed by the FERC and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by CIG from other federal, state, or local permitting agencies concerning instances of noncompliance, and CIG's response.
8. CIG must receive written authorization from the Director of OEP **before commencing service for each component** of the proposed project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
9. **Within 30 days of placing the certificated facilities in service**, CIG 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 CIG has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

10. Where the proposed pipelines would be constructed adjacent to or within powerline rights-of-way, CIG shall consult with the affected powerline companies and develop measures for construction and operation in the vicinity of powerlines. These measures shall be filed with the Secretary **prior to construction**.
11. CIG shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, CIG shall mail the complaint procedures to each landowner whose property would be crossed by the project.
 - a. In its letter to affected landowners, CIG shall:
 - (1) provide a local contact that the landowners shall call first with their concerns; the letter shall indicate how soon a landowner shall expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they shall call CIG's Hotline; the letter shall indicate how soon to expect a response; and
 - (3) instruct the landowners that if they are still not satisfied with the response from CIG's Hotline, they shall contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.
 - b. In addition, CIG shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by MP;
 - (3) the description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. CIG shall incorporate the Eaton Ditch Route Variation (MPs 29.8 to 30.9) into the Line 250A pipeline route. CIG shall file with the Secretary, for written review and approval by the Director of OEP, revised construction alignment sheets that show the modified route and workspaces, **prior to construction** in this area.

13. CIG shall incorporate the Pioneer Route Variation (MPs 58.3 to 61.5) into the Line 250A pipeline route. **Prior to construction**, CIG shall file revised alignment sheets showing the modified route for review and written approval of the Director of OEP.
14. CIG shall locate abandoned mine shafts within 100 feet of all construction workspaces along Line 250A between MPs 49.6 and 51.7. CIG shall revise its alignment sheets to show these locations and shall file the revised documents with the Secretary **prior to construction** for review and written approval of the Director of OEP. CIG shall consult with the mine owners to determine if the abandoned mine shafts are properly closed and shall install appropriate warning signs and fencing on the construction right-of-way to mark the mine locations.
15. CIG shall modify its Procedures, Reclamation Plan, and Invasive Species Plan to include protocol for monitoring of wetlands for a minimum of five years after construction is completed. CIG shall file the modified plans with the Secretary for review and written approval of the Director of OEP **prior to construction**.
16. CIG shall develop a R&BCM Plan to be implemented as-needed during construction. The R&BCM Plan shall be filed with the Secretary for the review and written approval of the Director of OEP **prior to construction**. It shall include provisions for:
 - a. coordinating construction work schedules with affected landowners prior to starting construction;
 - b. maintaining access to all businesses during business hours, and maintaining access to all residences except for brief periods essential to pipe-laying activities;
 - c. where necessary, installing temporary safety fencing to control access and minimize the hazards associated with an open trench;
 - d. notifying affected residents and businesses in advance of any scheduled disruption of utilities and limit the duration of any interruption to the smallest time possible;
 - e. repairing any damages to property that result from construction activities or providing compensation; and
 - f. restoring all areas disturbed by construction work areas to “as before or better” conditions.

17. CIG shall not implement any treatment plan/measures (including archeological data recovery); begin construction of facilities; or begin use of any staging, or temporary work areas and new or to-be-improved roads **until**:
- a. CIG files with the Secretary cultural resources survey and evaluation reports; any necessary treatment plans; Native American consultations; and the Colorado SHPO comments on the reports and plans; and
 - b. the Director of OEP reviews and approves all cultural resources survey reports and plans, and notifies CIG in writing that treatment plans/procedures may be implemented and/or construction may proceed.

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