

124 FERC ¶ 61,069
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.

Cimarron River Pipeline, LLC

Docket Nos. CP08-17-000

Northern Natural Gas Company

CP08-18-000

ORDER GRANTING ABANDONMENT
AUTHORITY AND ISSUING CERTIFICATES

(Issued July 18, 2008)

1. On November 2, 2007, Northern Natural Gas Company (Northern) filed an application in Docket No. CP08-18-000 under section 7(b) of the Natural Gas Act (NGA) for authority to abandon by sale to Cimarron River Pipeline, LLC (Cimarron) certain of Northern's Field Area pipeline facilities known as the Beaver Wet System in various counties in Texas, Oklahoma and Kansas. Northern also requests Commission approval to abandon the services it provides with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment. On the same date, Cimarron filed an application in Docket No. CP08-17-000 under section 7(c) of the NGA and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity to acquire and operate the Beaver Wet System. Cimarron also requests issuance of blanket certificates pursuant to Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations. Neither Northern nor Cimarron are requesting authorization to construct or remove any facilities.

2. As conditioned herein, we will approve Northern's abandonment of the facilities by sale to Cimarron and grant Cimarron's associated requests for certificate authority.

I. Background

3. Northern is a natural gas company engaged in the transportation of natural gas in interstate commerce pursuant to the NGA. Northern is a Delaware corporation having its principal place of business in Omaha, Nebraska. It is authorized to do business in the states of Delaware, Texas, New Mexico, Oklahoma, Kansas, Nebraska, Iowa, Minnesota, Illinois, Michigan, Wisconsin, North Dakota, South Dakota, and Louisiana. Northern's entire pipeline system consists of approximately 16,500 miles of pipeline extending from the Permian Basin in Texas to the Upper Peninsula of Michigan. Northern's Field Area

is in Texas, Oklahoma, and Kansas and provides access to supplies from the Hugoton, Anadarko, Permian, and Rocky Mountain supply basins for Northern's Market Area, as well as Field Area interconnects. Within its Field Area System Northern operates its Beaver Wet System, which was originally constructed to deliver unprocessed gas containing liquid hydrocarbons from the Anadarko Basin¹ to processing plants in the region. Northern states that the wet gas is processed primarily at the ONEOK Bushton Plant and Penn Virginia Energy, LLC's Beaver Plant (Beaver Plant).²

4. Cimarron is a limited liability company formed for the purpose of this transaction. It is presently owned by Northern. Cimarron does not currently own or operate any pipeline facilities and is not currently involved in natural gas transportation. If granted the certificate sought herein, Cimarron would become a natural gas company within the meaning of section 2(6) of the NGA and would be engaged in the transportation of natural gas subject to the Commission's jurisdiction.

5. Upon approval of the proposed transaction, Northern will transfer the Beaver Wet System to Cimarron, and immediately thereafter, Northern will sell 100 percent of the Cimarron membership interests to DCP Midstream, LP (DCP).³ Upon closing of the acquisition, DCP will be the managing member of Cimarron.

6. Previously, on December 16, 2005, in Docket Nos. CP06-39-000 and CP06-40-000, Northern and Duke Energy Field Services, LP (renamed DCP as of January 1, 2007), respectively, had filed for approval of the sale and acquisition of these same facilities as nonjurisdictional gathering facilities. On September 8, 2006, the Commission issued an order denying both petitions, finding that the facilities performed a jurisdictional function.⁴ The instant applications stem from DCP's agreement to purchase Cimarron, and operate these assets as jurisdictional transmission facilities.

¹ The Anadarko Basin is located in the Texas Panhandle, northwest Oklahoma, and south-central Kansas.

² The ONEOK Bushton Plant is located on Northern Natural's system downstream of the facilities Northern Natural proposes to abandon. The Beaver Plant is located on the Beaver Wet System.

³ DCP is a wholly owned, indirect subsidiary of the holding company DCP Midstream, LLC, (formerly Duke Energy Field Services, LP) which in turn is owned 50 percent by Spectra Energy Corporation subsidiaries and 50 percent by ConocoPhillips Gas Company.

⁴ *Northern Natural Gas Co.*, 116 FERC ¶ 61,238 (2006).

II. Proposals

A. Abandonment by Northern

7. The Beaver Wet System was originally placed into service and authorized in 1943.⁵ The Beaver Wet System handles wet gas for processing. Northern states that its system was originally built to support its merchant service. However, Northern states that it no longer performs a merchant function and, thus, no longer needs to own and operate the Beaver Wet System to be able to ensure that its customers have access to supplies from the Anadarko Basin area.

8. Northern states that gas production in the Hugoton Field and Anadarko Basin has been declining. Processing plants are continuously looking for means to operate more efficiently and economically, and some processing plants have been idled. The facilities originally constructed to deliver gas to various processing plants are being modified, combined, and in some cases abandoned, in order to achieve appropriate economies of scale to maintain efficient operation of processing plants and to allow the residue gas to continue to be competitively made available to markets. Northern states that the largest straddle processing plant located on Northern's system, owned by ONEOK and located at Bushton, Kansas, was idled on January 1, 2007. This shutdown has changed the dynamics for Northern's system and for parties who gather and process gas in these areas.

9. Following the sale of its West Hugoton facilities⁶ and the Beaver Wet System, Northern will no longer own significant pipeline segments that will flow unprocessed gas to processing plants, but will continue to own the significant pipeline segments that transport gas to markets in the Field or Market Areas. Today, approximately 89.5 percent of the volumes flowing on the Beaver Wet System are delivered off of Northern's system to processing plants; the parties transporting the residue gas from those plants have the ability, but are not required, to return the gas to Northern. Northern states that the same opportunities for the transportation of the dry residue gas from these processing plants will be available following the abandonment of the Beaver Wet System. Northern understands that, following the abandonment of the Beaver Wet System, Cimarron will continue to deliver committed gas to the Beaver Plant and other processing plants that

⁵ *Northern Natural Gas Co.*, 3 FPC 967 (1943).

⁶ *Northern Natural Gas Co.*, 118 FERC ¶ 61,035 (2007). Northern was authorized to abandon by sale the West Hugoton facilities to WTG Hugoton, LP.

may be available, and will continue to be able to deliver gas to Northern, if so requested by the shipper.

10. Northern states that DCP currently owns gathering and processing facilities in the vicinity of the Beaver Wet System, including indirect ownership of the National Helium Plant. Many of DCP's gathering facilities interconnect with the Beaver Wet System. Northern states that absent the sale of the Beaver Wet System to DCP, DCP could have built new gathering lines to connect its gathering systems to the National Helium Plant or other DCP plants, and could have largely discontinued use of Northern's transmission system. Northern states that the loss of such a major shipper on Northern's system would have negatively impacted Northern and its customers.

11. Northern's Field Area system now includes five lines: A, B, C, D and E. Northern will retain the portions of the system that flow processed gas, which includes lines A, C, D and E, located between the Beaver Compressor Station and Northern's Mullinville compressor station, and portions of the B- and C-lines between the El Paso Natural Gas Company (El Paso) facility at Dumas and Northern's Mullinville Compressor Station. The lines retained by Northern will continue to primarily transport processed gas to markets on Northern's system and will continue to have the capability to receive residue gas from all supply basins. Subsequent to the abandonment, Northern's mainline to the Market Area will continue to have sufficient capacity to transport natural gas supplies to meet Northern's market requirements. In addition, residue gas from the DCP-affiliated National Helium Plant will be able to be delivered to Northern's system at the existing interconnect with Panhandle Eastern Pipe Line Company (Panhandle) near Mullinville, Kansas.

12. The pipeline assets to be transferred to Cimarron are primarily the segment of the B-line from the Sunray Compressor Station to the compressor station at Mullinville, the segment of the C-line upstream of the Sunray Compressor Station and a portion of the A-line upstream of Northern's Beaver Compressor Station. Northern states that these assets facilitate delivery of unprocessed gas to processing plants.

13. Northern states that the abandonment is critical to Northern and its shippers in reducing the cost of doing business in Northern's Field Area. Northern states that it has experienced a significant loss of transportation revenue in the Field Area and the proposed asset sale and the associated cost reductions will benefit Northern's entire customer base, while at the same time maintaining supply access and providing more efficient use of the facilities by Cimarron. Northern states that its customers will benefit as a result of the elimination of the operating and maintenance costs associated with these facilities, as well as elimination of the need for future capital expenditures for modifications and replacements of these facilities. Another benefit seen by Northern is

the reduction of fuel use as a result of the sale, which would benefit Northern's customers immediately. Further, Northern's customers will benefit from the revenue to be received from Cimarron for the compression service. Northern also states that, absent the sale, DCP would be constructing new facilities to handle much of its volumes, and Northern's transmission system would not be needed as before. Northern avers that this would result in duplicative facilities that would adversely impact Northern, its customers, the environment, and landowners.

14. The specific facilities to be transferred are described as follows:⁷

Dumas to Sunray

15. Northern intends to abandon the Dumas to Sunray C-line which is located in Moore County, Texas and consists of approximately 17 miles of 30-inch diameter pipeline commencing at the outlet of a scrubber vessel located near El Paso's Dumas facility and extending eastward to Northern's Sunray Compressor Station. Northern states that the pipeline segment is essentially idle, except for a single farm tap.

Sunray to Beaver

16. Northern proposes to abandon the Sunray to Beaver B-line and associated compression which are located in Moore, Hutchinson, Hansford, and Ochiltree Counties, Texas and Beaver County, Oklahoma. This segment consists of about 37 miles of 16-inch diameter, 39 miles of 26-inch diameter, and 20 miles of 30-inch diameter B-line pipeline and the Spearman Compressor Station. The Spearman Compressor Station consists of five compressor units totaling 12,050 hp (Northern operates the 37-mile, 16-inch diameter segment at approximately 150 psig to provide deliveries to one master meter and three farm taps).

Spearman to Beaver

17. Northern proposes to abandon the Spearman to Beaver A-line which is located in Ochiltree County, Texas and Beaver County, Oklahoma and consists of approximately 50 miles of 24-inch diameter pipeline. Gas on this segment is received from surrounding wet gas gathering systems. Northern also proposes to abandon the Northrup and Perryton-Barlow Compressor Stations in Ochiltree County whose discharge lines flow into the downstream portion of the Beaver A-line. The Northrup Compressor Station

⁷ Northern provided more detailed descriptions, maps, and schematics of the facilities in Exhibits Z, Z-II, Z-III, Z-IV, Z-V, Z-VI, and Z-VII to its application.

consists of two compressor units totaling 2,464 hp and the Perryton-Barlow Compressor Station consists of three compressor units totaling 2,525 hp.

Beaver to Mullinville

18. The Beaver to Mullinville B-line is located in Beaver and Harper Counties, Oklahoma and Clark and Kiowa Counties, Kansas and consists of approximately 74 miles of 26-inch diameter pipeline and 16 miles of 30-inch diameter pipeline. The Beaver to Mullinville B-line currently delivers gas to locations for processing or to Mullinville for further transportation downstream on Northern's system. Northern states that residue gas from the Beaver Plant and the National Helium Plant will remain available to Northern's customers through Northern's connections with the Beaver Plant and the existing interconnect with Panhandle at Mullinville.

19. Northern intends to transfer seven compressor units (Units 8 through 14) totaling 14,000 hp at its Beaver Compressor Station that will be segregated from the remaining seven units (Units 15 through 21) totaling 28,500 hp. Upon closing of the sale, Northern will be the operator of the Beaver Compressor Station for Cimarron, and will also provide intermittent compression services for Cimarron's transmission activities.

20. Northern also proposes to transfer the Beaver County #1, Beaver County #2, and Clark County #1 Compressor Stations located along the B-line. The Beaver County Compressor #1 Station consists of five compressor units totaling 4,010 hp and the Beaver County Compressor #2 Station consists of four compressor units totaling 3,430 hp. The Clark County Compressor #1 Station consists of three compressor units totaling 1,980 hp. Northern also proposes to transfer the approximately 8-mile, 12-inch diameter Clark County Line extending from the Clark County #2 Compressor Station to the B-line as well as the Clark County #2 Compressor Station which includes four compressor units totaling 2,840 hp.

Beaver Southeast

21. The Beaver Southeast System is located in Beaver, Ellis, Woodward, and Dewey Counties, Oklahoma and consists of approximately 43 miles of 24-inch diameter, 11 miles of 16-inch diameter, 13 miles of 12-inch diameter, 18 miles of 10-inch diameter, 28 miles of 8-inch diameter, and 19 miles of 6-inch diameter pipeline and nine compressor stations. A 6-inch diameter pipeline extends from the Woodward County #3 Compressor Station to the Woodward County #2 Compressor Station. The Woodward County #3 Compressor Station consists of a single 526 hp compressor unit and the Woodward County #2 Compressor Station has three compressor units totaling 1,021 hp.

22. Two other pipelines connect to the suction side of the Woodward County #2 Compressor Station. One pipeline extends approximately 26 miles and is made up of 10-inch and 12-inch diameter pipeline. The other pipeline is an 8-inch diameter, 18-mile pipeline paralleling a portion of the 26-mile pipeline. Approximately 60 miles of 12-inch, 16-inch, and 24-inch diameter pipeline extends from the Woodward County #2 Compressor Station to the Beaver Compressor Station. Compressor stations along this segment for which Northern seeks abandonment authority are Woodward County #1 Compressor Station (two units totaling 1,291 hp), Ellis County #2 Compressor Station (three units totaling 2,769 hp), Ellis County #1 Compressor Station (four units totaling 3,364 hp), Ellis County #3 Compressor Station (two units totaling 927 hp), Beaver County #6 Compressor Station (three units totaling 2,363 hp), and Beaver County #7 Compressor Station (three units totaling 2,633 hp). An 8-inch diameter, 10-mile pipeline connects the Beaver County #5 Compressor Station and the Beaver County #7 Compressor Station to the Beaver Compressor Station. The Beaver County #5 Compressor Station consists of two units totaling 310 hp.

Beaver Low

23. The Beaver Low system is located in Beaver County, Oklahoma and consists of six miles of 8-inch diameter pipeline, three miles of 10-inch diameter pipeline, the Beaver County #3 Compressor Station (one 450 hp unit), and the Beaver County #13 Compressor Station (one 546 hp unit). The system moves gas to the Beaver Compressor Station.

Beaver Northwest

24. The Beaver Northwest system is located in Beaver County, Oklahoma and consists of 13 miles of 12-inch diameter pipeline and the Beaver County #12 Compressor Station (four units totaling 2,921 hp). The Beaver Northwest system moves gas to the Beaver Compressor Station.

Operation of Beaver Compressor Station and Compression Service

25. Ownership of the Beaver Compressor Station would be split between Northern and Cimarron. At closing, Northern would enter into an Operating and Maintenance Services Agreement (Agreement) with Cimarron pursuant to Schedule 6.1(d) to the Purchase and Sale Agreement provided in Exhibit U to Northern's application. Under this Agreement, Northern would operate Cimarron's facilities at the Beaver Compressor Station. Northern also proposes to provide intermittent jurisdictional compression

service to Cimarron at the Beaver Compressor Station pursuant to Article 1 of the Agreement.

Continuity of Service

26. The filings show that contracts or offers have been made to all shippers, including firm, alternate and capacity release shippers, using the Beaver Wet System to assure that they will be able to receive continued service after the abandonment under conditions comparable to what they currently receive from Northern. Further, the farm tap customers that are being served through the Beaver Wet System will continue to be served by Cimarron.

B. Certificate Request by Cimarron

27. Cimarron, a new interstate pipeline, seeks authority to acquire and operate the Beaver Wet System as jurisdictional transmission facilities.

28. Cimarron proposes to provide transportation for gas gathered by its affiliate DCP for existing customers currently being served by Northern, and for any future customers who may desire to use the facilities. Cimarron avers that the Beaver Wet System functions separately from the remainder of Northern's Field Area pipelines and its primary purpose is to deliver raw gas to processing plants in the Anadarko Basin area. Cimarron states that, as these raw gas facilities form a separate subsystem, they are not used by Northern's market area shippers; only a very small amount of gas remains on the Northern system beyond the Beaver Wet System. As a result, Cimarron avers, the Beaver Wet System would be best used and its shippers would be best served if the facilities are owned by Cimarron, a company whose future parent DCP has a key business focus on raw gas handling and operations, and on maximizing the value of unprocessed natural gas from the Anadarko Basin producing region.

29. Cimarron points out that all active gas processing plants that process raw gas flowing on the Beaver Wet System are connected directly or indirectly to the Beaver Wet System. Cimarron states that, under the ownership of Cimarron, these assets can be used more effectively in the transportation of unprocessed gas, and the economic use of these assets can be maximized. Specifically, Cimarron claims it can efficiently use these assets in coordination with existing upstream gas gathering facilities in the region and can handle raw gas efficiently for delivery to the field area processing plants of DCP or its affiliate and to other third party processing plants also in the field area.

III. Interventions, Protests, Comments, and Answers

30. Joint notice of the Cimarron and Northern applications was published in the *Federal Register* on November 23, 2007 (72 Fed. Reg. 65,711). The Kansas Corporation Commission (KCC) filed a timely notice of intervention. Aquila, Inc. d/b/a/ Aquila Networks (Aquila); BP Canada Energy Marketing Corp.; Chevron Natural Gas, a division of Chevron U.S.A. Inc.; Madison Gas and Electric Company; Mewbourne Oil Company; ONEOK Field Services, L.L.C. and ONEOK Midstream Gas Supply, L.L.C. (jointly, ONEOK Field); and ONEOK Gas Transportation, L.L.C. (ONEOK) filed timely, unopposed motions to intervene.⁸ Connect Energy Services, LLC (Connect Energy) and PVR Midstream LLC (PVR), jointly, filed a late motion to intervene. The Commission finds that granting the motion to intervene out of time will not delay, disrupt, or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, the late motion to intervene is granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.⁹ There are no protests to these applications.

31. ONEOK and ONEOK Field request consolidation of the dockets in this proceeding.¹⁰ Although several elements of the two applications are similar, they must be examined independently, seriatim. This is because the factors to be considered in analyzing the abandonment application (such as the economic effect on the pipelines' current consumers) are independent from those involved with the certificate application (such as the subsidization issue). The Commission finds that the two applications are significantly exclusive such that consolidation would not produce sufficient procedural efficiency to warrant consolidation. Accordingly, the requests for consolidation are denied; however, we are considering both of these related applications in this order.

⁸ Timely unopposed motions to intervene and timely notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2008).

⁹ 18 C.F.R. § 385.214(d) (2008).

¹⁰ ONEOK and ONEOK Field also filed protests and requests for formal evidentiary hearings. On April 29, 2008, ONEOK and ONEOK Field filed a withdrawal of their protests stating that they had negotiated a resolution of their concerns and issues.

IV. Discussion

A. Abandonment by Northern

32. Since the facilities Northern seeks to abandon are facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Northern's proposed abandonment requires Commission authorization under NGA section 7(b).¹¹ For the reasons given below, we will grant Northern's request for abandonment authority.

33. In reviewing a request for abandonment by sale, the Commission considers the needs of the two natural gas systems and the public markets they serve, the environmental effects of its decision, the economic effect on the pipelines and their consumers, and the presumption in favor of continued service.¹² In the instant case, the subject facilities are proposed to be abandoned because Northern contends they are underused and uneconomical for it to continue operating. However, they are not deteriorated or being replaced. The facilities will remain functioning to transport natural gas in interstate commerce. Since no facility will be constructed or removed from service, the proposal raises no environmental issues. No service is proposed to be discontinued. Only the owner/operator of the facilities would change.¹³ Hence, the pertinent issues are the economic impact on Northern's present customers and whether arrangements have been made for continuation of service.

¹¹ Section 7(b) of the NGA, 15 U.S.C. § 717f(b).

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

¹²*Transcontinental Gas Pipe Line Co. v. FPC*, 160 U.S. App. D.C. 1, 488 F.2d 1325 at 1330 (1973), *cert. denied sub nom., Natural Gas Pipeline Co. v. Transcontinental Gas Pipeline Corp.*, 417 U.S. 921, 41 L. Ed. 2d 226, 94 S. Ct. 2629 (1974).

¹³ The environmental review of this proposal under § 380.4 confirms that this action qualifies as a categorical exclusion under section 380.4(a) (36).

34. We agree with Northern's assertion that cost reductions resulting from the removal of these facilities from its rate base could benefit Northern's entire customer base, while supply access will be maintained. Northern estimates that the rate impact of removing the costs of the Beaver Wet System to its remaining customers could be a decrease of 3.3 percent. Under a rate case settlement, Northern had a rate change moratorium in place through November 1, 2007, but now is free to file a rate case to reflect these rate base reductions; however, Northern is under no obligation to do so.¹⁴ Nonetheless, abandonment of the facilities will have no negative impacts upon the current customers. As to continuation of service, the filings show that contracts have been concluded or offers have been made to all shippers, including firm, alternate and capacity release shippers using the Beaver Wet System to assure that they will continue to receive comparable service under comparable terms after the abandonment. Accordingly, the Commission determines that the proposed abandonment is in the public interest and Northern is granted permission and approval to abandon by sale to Cimarron the Beaver Wet System.

Compression Service

35. Northern, in its transmittal letter, and as part of Article 1 of the Agreement, requests approval to provide incidental jurisdictional compression service to Cimarron at the Beaver Compressor Station for Cimarron's transportation service that will use Northern's available compression when Cimarron's volumes require additional compression and Northern can perform such compression service without detriment to Northern's shippers.¹⁵ Northern states that the compression service may be used during times when Cimarron's compressor(s) are down due to repairs, other events that may cause a loss of the ability of Cimarron to provide compression, or if Beaver Wet System volumes exceed the Cimarron Beaver Station units' capacity. Northern also notes that the compression service will be provided only if capacity is available from Northern's retained Beaver Station units to provide the excess compression service.¹⁶

¹⁴ See Stipulation and Agreement of Settlement, Docket Nos. RP03-398-000 and RP04-155-000, Article II, paragraph A. *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 (2005).

¹⁵ Northern Application at 21-22 and Exhibit U in the form of Schedule 6.1(d).

¹⁶ Northern states that the incidental compression service that it proposes to provide to Cimarron is different from the firm compression service provided to WTG

36. Northern proposes to charge Cimarron an incidental jurisdictional compression service fee of \$0.04 per MMBtu plus actual fuel consumed in providing the service.¹⁷ Northern argues that Northern's customers will benefit from the incidental jurisdictional compression service because Cimarron will pay a portion of the fixed costs when it uses the excess compression available at the station that would otherwise be paid by Northern's other customers.

37. According to Northern's March 17, 2008 data response, the incidental jurisdictional compression service for Cimarron at the Beaver Compression Station will be provided only on an interruptible basis and no other party can or will receive such incidental service at the Beaver station. Northern maintains that the terms of service and rates will be provided in accordance with the Agreement filed as part of the certificate application. Moreover, Northern asserts that it will credit revenues received from the incidental compression service, other than fuel, to its cost of service in its next rate case and that fuel reimbursed for use at the Beaver facilities will be included in Northern's annual fuel Periodic Rate Adjustment (PRA) filing.

38. The Commission has found that between rate cases, it will accept new services and the initial rates for such services if they are designed properly based on the company's currently-approved cost of service.¹⁸ However, a party with rates regulated by the Commission must provide service under a Commission-approved rate schedule.¹⁹ Therefore, Northern is required to clearly state the rate schedule under which it intends to provide the incidental compression service at the approved initial rate. Further, in its annual PRA filings, Northern is directed to credit its customers any fuel recovered from Cimarron. Also, upon transfer of the facilities, Northern must adjust the fuel percentages to remove fuel associated with the transferred facilities.²⁰

Hugoton, LP and approved by the Commission in *Northern Natural Gas Co.*, 119 FERC ¶ 61,035 (2007) under Docket No. CP06-89-000.

¹⁷ See Article 1.3(a)(x) of the Agreement.

¹⁸ See, e.g., *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289, at P 61 (2004).

¹⁹ 18 C.F.R. § 154.107 (2008) (this section of the tariff must present the currently effective rates and charges under each rate schedule).

²⁰ Northern states that it will file a limited section 4 rate case to change its field fuel and section 2 fuel rates upon approval of its abandonment application and the close

(continued)

B. Cimarron's Acquisition of the Beaver Wet System

39. Cimarron requests a certificate of public convenience and necessity to acquire and operate the Beaver Wet System. Since the facilities Cimarron is purchasing provide transportation of natural gas in interstate commerce, Cimarron's proposal is subject to the Commission's jurisdiction under section 7(c) of the NGA.²¹

Consistency with the Certificate Policy Statement

40. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.²² A proposal to acquire facilities with no related construction of facilities, such as in this proceeding, does not educe the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain.

41. However, the threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to acquisitions. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposal might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation.

42. As a new natural gas company, Cimarron has no current customers who may be affected by the proposal. Thus, there is no subsidization possible and the threshold requirement of the Certificate Policy Statement is satisfied.

43. As to Northern, no current transmission service will be affected by the acquisition. As discussed above, we have determined that service on comparable terms will be

of the asset sale to reflect the abandonment of the compressor units and the related fuel requirements. Northern, Application at 27.

²¹ 15 U.S.C. § 717f(c).

²² *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

maintained upon transfer of the facilities. Northern's current customers that remain on the system will not pay more for transportation service after the abandonment. Northern's other customers could benefit from a reduced rate base and a reduction in operating and maintenance costs. Northern and its customers also will experience a reduction in fuel consumption since Northern is selling several compression units to Cimarron.

44. Therefore, the sale and purchase will not result in adverse operational or economic impacts on existing Northern customers, nor has any other pipeline in the region claimed to be adversely impacted. Based on the benefits the proposed project will provide to the market and the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that the public convenience and necessity requires the approval of Cimarron's proposal to acquire, own, and operate the Beaver Wet System subject to the conditions described in this order.

Initial Rates

45. As discussed below, we find that Cimarron's proposed initial rates are in the public interest, subject to modifications and conditions.

1. Cimarron's Proposed Rates

46. Cimarron is proposing to offer firm (Rate Schedule FT) and interruptible (Rate Schedule IT) open-access transportation services at cost-based recourse rates under Part 284 of the Commission's regulations. Cimarron states that its proposed rates reflect a straight fixed-variable rate design, but that it may offer negotiated rates as an option. Cimarron also avers that the pro forma tariff is primarily modeled after the approved existing tariffs of Dauphin Island Gathering Partners (Dauphin Island) and Northern. Cimarron further notes that certain specific approved tariff sections from Panhandle and Gulfstream Natural Gas Pipeline were also used.

47. The proposed FT recourse rates are derived using a \$21,544,615 first-year cost of service. Cimarron's proposed total cost of service consists of \$12,386,889 of operations and maintenance expenses; \$4,535,037 of administrative and general expenses; \$826,597 of taxes other than income taxes; \$917,494 of depreciation expenses; \$2,076,178 of return requirement (at 11.2 percent rate of return on equity based on a capital structure of 51.6 percent equity and 48.4 percent debt, and 7.09 percent cost of debt); and \$802,420 of income taxes. For year one, Cimarron reflects a proposed rate base comprised of gross plant investment of \$77,787,258, less accumulated depreciation of \$55,188,487, less accumulated deferred income taxes of \$56,119, for a total rate base of \$22,542,652. As discussed in the Accounting section *supra*, this rate base does not include any acquisition

adjustment amounts.²³ Further, the recourse rates are derived using a 310,649 Dth per month of FT reservation billing determinants and 109,582,153 Dth of commodity billing determinants. The proposed maximum cost-based FT reservation rate is \$5.2833 per Dth per month and the proposed maximum commodity rate is \$0.0169 per Dth per month. Cimarron estimates \$1,849,417 of variable costs. The proposed maximum IT rate is \$0.1906 per Dth and is derived at 100 percent load factor of the FT rate. The Commission's policy regarding interruptible service requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers, or an allocation of costs and volumes to these services.²⁴ In this instance, Cimarron has elected to allocate costs to both interruptible and firm transportation services. Fuel charges are calculated based on historical experience at the compressor stations being purchased from Northern and match the design of Northern's fuel and unaccounted for rates. Cimarron proposes to recover the fuel and lost and unaccounted for gas by a tracking mechanism to ensure that only the actual fuel and unaccounted for gas is charged to shippers.

2. Return on Equity and Capital Structure

48. Cimarron states that it will obtain project financing through member-contributed equity and will have no publicly-traded equity interests. Cimarron proposes to adopt a capital structure of 48.4 percent debt at a cost of 7.09 percent and 51.6 percent equity at a proposed rate of return on equity of 11.2 percent, which is based on the debt/equity structure of its ultimate parent company, DCP.

49. Cimarron's proposed capital structure and rate of return on equity are generally consistent with Commission precedent. In *Cameron Interstate Pipeline, LLC* and *Dominion South Pipeline Co., L.P.*,²⁵ the Commission approved a capital structure in the range of 50 percent debt/50 percent equity. In *Northern Natural Gas Company* and *Kern River Gas Transmission*,²⁶ the Commission approved a rate of return of 11.20 percent.

²³ Cimarron's March 17, 2008 data response notes the acquisition adjustment amount of \$27,401,229 included in Account 114, Gas Plant Acquisition Adjustments, is not used to compute the cost of service.

²⁴ See *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

²⁵ See *Cameron Interstate Pipeline, LLC*, 115 FERC ¶ 61,229 (2006). See also *Dominion South Pipeline Co., L.P.*, 113 FERC ¶ 61,064 (2005).

²⁶ See *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 37 (2007). See also *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 149-50 (2006).

Accordingly, we will approve Cimarron's proposed capital structure and rate of return on equity.

3. Rate Design

50. Cimarron's FT rates are designed based on reservation billing determinants of 310,649 Dth per month. The reservation billing determinants are based on twelve months ending December 2006, as detailed in Exhibit P, Schedule 10 of its application. In certain circumstances, the Commission has permitted pipelines to base their rates on billing determinants instead of using the annual physical capacity of the pipeline. In *Crossroads Pipeline Co.*, the Commission stated that the policy of requiring rates to be designed on actual capacity was intended to deter pipelines from oversizing facilities and prevent the over-recovery of costs.²⁷ In that case, since the Crossroads facilities were already built, the Commission found that there was no possibility of overbuilding, and thus permitted the pipeline to base its rates on projected demand for capacity rather than actual physical capacity. Moreover, the Commission noted that over-recovery of costs could be addressed when the pipeline filed its required cost and revenue study pursuant to section 4 of the NGA. Since the facilities that Cimarron proposes to acquire from Northern have been in service for years, there is no danger that Cimarron will overbuild. Further, as discussed below, Cimarron will file a rate review report in three years and the billing determinants will be reviewed again at that time based on Cimarron's actual operational history. Therefore, the Commission finds that the circumstances of this case also warrant departure from the Commission's general policy of requiring a pipeline to base its rates on actual physical capacity.

51. The Commission has reviewed the proposed cost of service and proposed initial rates, and generally finds them reasonable, subject to modifications and conditions discussed below.

4. Request to Approve Negotiated Rate Contract

52. Cimarron states that Connect Energy Services, LLC (Connect Energy), a PVR affiliate, currently has a firm transportation contract that provides for transporting natural gas from PVR's affiliated upstream gathering facilities through the Anadarko Basin Facilities to PVR's Beaver Plant in Beaver County, Oklahoma. Cimarron further states that Connect Energy's FT Service Agreement with Northern expires on the earlier of the close of the sale of the Anadarko Basin Facilities or the termination of the Purchase and

²⁷ *Crossroads Pipeline Co.*, 73 FERC ¶ 61,138, at 31,395-6 (1995).

Sale Agreement. Cimarron explains that DCP, on behalf of Cimarron, and Connect Energy have agreed to what Cimarron states is a negotiated rate, non-conforming FT Service Agreement (Negotiated Rate Agreement).²⁸ Cimarron also notes that it has agreed to the transportation contract terms after closing with PVR, and PVR does not oppose the transaction. Cimarron thus requests Commission approval of the negotiated rate and non-conforming provisions of the Negotiated Rate Agreement at this time.²⁹

53. Consistent with the *Modified Negotiated Rate Policy*,³⁰ the essential elements of the negotiated rate agreement between Cimarron and Connect Energy are listed in Cimarron's proposed tariff.³¹ Under the Negotiated Rate Agreement, Cimarron will transport a combined 81,267 Dth per day for Connect Energy from various receipt points to the PVR Beaver Plant, the Mullinville interconnect with Northern, or the PVR Spearman Plant delivery points under Rate Schedule FT. The negotiated rate agreement provides for a \$0.08 per Dth total transaction rate at two receipt points and a \$0.15 per Dth total transaction rate at 18 receipt points.

54. The negotiated transaction rate is a total volumetric rate, and is inclusive of Cimarron's FT reservation, commodity rates and all rate surcharges (i.e. all charges other than fuel reimbursement and lost or unaccounted gas) stated in Cimarron's tariff, and is billed based on actual quantities delivered to shipper's delivery point(s). The negotiated transaction rate in effect is to be adjusted annually commencing on the first of the month following the first anniversary of the date of initial transportation service under the negotiated rate agreement and each subsequent anniversary thereafter to reflect the changes, if any, in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics or any other successor or substitute agency or authority (CPI Index). The negotiated rate then in effect is adjusted by the percentage increase or decrease in the CPI Index for the most recent 12-month period compared to the immediately preceding 12-month period. Under the negotiated

²⁸ Citing Exhibit Z of Cimarron's Application.

²⁹ Cimarron Application at 20-21.

³⁰ *Natural Gas Pipelines Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *order dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006) (*Modified Negotiated Rate Policy*).

³¹ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, Statement of Negotiated Rates, Original Sheet No. 9.

rate agreement, the then-existing negotiated rate will never be increased by more than three percent per year nor reduced below the original negotiated rate.

55. The Commission does not normally review proposed negotiated rate agreements as part of a certificate application,³² and only approves negotiated rates outside of the context of an NGA section 4 rate proceeding in very limited circumstances.³³ Therefore, we will not rule on the negotiated rate in the context of this certificate proceeding. To seek approval of the negotiated rate in its Negotiated Rate Agreement, Cimarron should follow the normal requirement that a separate filing be made consistent with the *Alternative Rate Policy Statement*³⁴ as revised in the Commission's *Modified Negotiated Rate Policy*.³⁵ Additionally, consistent with *Columbia Gulf Transmission Co.*,³⁶ Cimarron must disclose any other agreement, understanding, negotiation or consideration linked to the Negotiated Rate Agreement.

56. Cimarron's proposed negotiated rate agreement with Connect Energy includes several material deviations from Cimarron's form of service agreement,³⁷ mainly processing rights and alternative pressure requirements, which appear to change the conditions under which service is provided and may present a risk of undue

³² *CenterPoint Energy*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,042, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

³³ See *Southern LNG, Inc.*, 120 FERC ¶ 61,258 (2007).

³⁴ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services, Statements of Policy and Comments*, 74 FERC ¶ 61,076 (1996), *order on clarification*, 74 FERC ¶ 61,194 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996) (*Alternative Rate Policy Statement*).

³⁵ *Modified Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *order dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

³⁶ See *Columbia Gulf Transmission Co.*, 85 FERC ¶ 61,373 (1998).

³⁷ See Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, Form of Amendment to Service Agreement, Original Sheet Nos. 204-205.

discrimination.³⁸ In *Columbia Gas Transmission Corp.*,³⁹ the Commission determined that it will permit the implementation of negotiations resulting in deviations from the pipeline's form of service agreement, so long as such changes do not change the conditions under which service is provided and do not present a risk of undue discrimination. Moreover, in *East Tennessee*,⁴⁰ the Commission held that a pipeline must provide a detailed narrative outlining, among other things, the effect of the terms of its negotiated contract on the rights of the parties, and why such deviation does not present a risk of undue discrimination. Therefore, we will require Cimarron to file the executed Negotiated Rate Agreement no later than 60 days prior to the commencement of service, provide a detailed narrative outlining the effect of the processing rights and alternative pressure requirements of its Negotiated Rate Agreement, and explain why such material deviations do not present a risk of undue discrimination.

5. Rate Changes and Three-Year Filing Requirement

57. If Cimarron desires to make any other rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under section 7(c) of the NGA. In that filing, Cimarron will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are placed in service, Cimarron must make a filing under section 4 of the NGA to change its rates.

58. Consistent with Commission precedent,⁴¹ the Commission will require Cimarron to file a cost and revenue study at the end of its first three years of actual operation to

³⁸ By way of example, most of the maximum allowable operating pressure quantities at various receipt points in Cimarron's proposed Negotiated Rate Agreement with Connect Energy are greater than the maximum allowable operating pressure quantities at the same receipt points in Cimarron's FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 6.1, Original Sheet No. 122. In addition, the Negotiated Rate Agreement lists a minimum allowable operating pressure quantity at the PVR Spearman Plant delivery point, which does not appear to be included in Cimarron's tariff.

³⁹ See *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-02 (2001).

⁴⁰ See *East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162, at P 14 (2003) (*East Tennessee*).

⁴¹ See, e.g., *Empire State Pipeline.*, 116 FERC ¶ 61,074, at P 133 (2006). See also *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 52 (2005).

justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Cimarron's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.⁴² After reviewing the data, the Commission will determine whether to exercise authority under section 5 of the NGA to establish just and reasonable rates. In lieu of this filing, Cimarron may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

Pro Forma Tariff Issues

Section 2.1 – Gas Quality Specifications

59. Cimarron's proposed tariff provides heating value specifications of at least 1,050 Btu/cf or 2.0 GPM,⁴³ whichever is more lenient. For raw unprocessed gas received into Cimarron's pipeline system that has not previously been processed or subjected to other than mechanical separation, the minimum heating value will be 950 Btu/cf.⁴⁴

60. Cimarron clarifies that the new minimum heating value standard applies to other gas that a shipper may want to have transported on its raw gas system. Cimarron argues that when processed residue gas that does not meet the 1,050 Btu/2.0 GPM criterion is delivered to this system, the liquid content of the commingled gas stream is diluted, and since dilution increases costs, shippers who represent 99 percent of the gas on the facilities are harmed.

61. Cimarron further notes that the proposed 1,050 Btu/cf or 2.0 GPM specification is designed to protect and preserve the economic interests of shippers that ship raw gas on the Anadarko Basin Facilities. Cimarron maintains that this protection is afforded to all shippers and processors on the system equally, and affords no preference to DCP, Cimarron's proposed owner. Cimarron explains that absent this alternative standard for non-raw gas, a shipper could strip out valuable liquids, deliver the residue gas to

⁴² 18 C.F.R. § 154.313 (2008).

⁴³ Liquefiable hydrocarbons or natural gas liquids (NGLs), stated in gallons per Mcf of gas.

⁴⁴ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 2.1, Original Sheet No. 106.

Cimarron, and have the right to receive, at the delivery point, the thermal equivalent in gas that includes liquefiable hydrocarbons from gas supplied by other shippers, with the intent of then processing the gas to recover these valuable liquids – in effect “double reserving” liquids at the expense of other shippers.

62. Though Cimarron clarifies that the proposed minimum heating value specifications of at least 1,050 Btu/cf or 2.0 GPM apply to processed residue gas (non-raw gas), as opposed to raw unprocessed gas currently being transported on the Anadarko Basin Facilities, its tariff fails to make this distinction. Cimarron, therefore, is required to revise its tariff language to indicate that the heating value specifications of at least 1,050Btu/cf or 2.0 GPM, whichever is more lenient, apply to non-raw gas received into its system.

Section 2.4 – Gas Processing

63. In section 2.4 of the General Terms and Conditions (GT&C) of Cimarron’s tariff, the terms “Shipper,” “Shipper’s designee,” “person” and “party” are used throughout sub-sections (a) through (h) to indicate who owns or controls the gas or liquid constituents of the gas stream which is to be processed. Staff’s February 25 Data Request noted that the terms “Shipper” and “Shipper’s designee” could be the better and more consistent identifier terms in section 2.4. The data request asked Cimarron to explain the significance of the different terms.

64. In Cimarron’s March 17, 2008 data response, Cimarron agreed that interchangeable use of the terms “Shipper,” “Shipper’s designee,” “person” and “party” in the gas processing rights provision of its tariff could be confusing. Cimarron filed a proposed revision to section 2.4 of the GT&C of its proposed tariff as Attachment 3. However, Cimarron asserted that it could not agree to restrict the references to “Shipper’s designee” because the processing rights owner may not be a shipper and instead could be the supplier that sold gas to the shipper or another party.

65. Cimarron’s proposed revision to the identifier terms in sub-sections (a) through (h) of section 2.4 of the GT&C of its tariff reduces the multiplicity of references to gas processing rights owners without losing the original intent of the tariff language. Therefore, we will accept Cimarron’s revision to section 2.4 of the GT&C of its tariff pertaining to identifier terms, subject to Cimarron’s compliance with the condition below relating to its gas processing provisions.

66. In section 2.4(h), Cimarron’s proposed tariff states that:

If Transporter contracts with a processor or processors to have Strangers’

Gas processed at a processing plant to extract NGLs and other components Transporter will credit the net revenues it receives from extracted NGLs attributable to Strangers' Gas from the processing plant owner or operator to Transporter's cost of service in Transporter's next NGA Section 4 rate case.⁴⁵

67. In its March 17, 2008 data response, Cimarron states that any future shippers can easily retain and exercise gas processing rights and make a processing deal with either DCP or PVR/Connect. Therefore, Cimarron believes that imposition of a Strangers' Gas crediting mechanism and the related administrative burdens is not warranted, and recognition through the general rate case process is appropriate.

68. In *Northern*,⁴⁶ the Commission ordered the pipeline to develop a revenue crediting methodology similar to that reflected in section 44 of Northern's GT&C. Section 44 of Northern's tariff requires Northern to allocate the revenue first, "to all notifying parties on a pro rata GPM basis" and, second, to credit any remaining revenues to its "Field Area transportation commodity rates."⁴⁷ Therefore, consistent with Commission precedent regarding net revenue credits, Cimarron is ordered to develop a revenue crediting methodology similar to that reflected in Northern's tariff. In the alternative, Cimarron is directed to further explain why it should not adopt a revenue crediting methodology similar to that reflected in Northern's tariff.

Section 7.3(b) – Force Majeure

69. While Cimarron includes the term "maintenance" as part of its *force majeure* provisions,⁴⁸ it is unclear whether this language refers to a planned or an unplanned event. In *Florida Gas Transmission Co.*,⁴⁹ the Commission stated that, while

⁴⁵ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 2.4(h), Original Sheet No. 109.

⁴⁶ See *Northern Natural Gas Co.*, 120 FERC ¶ 61,110, at P 10 (2007) (Northern).

⁴⁷ Northern, FERC Gas Tariff, Fifth Revised Vol. No. 1, GT&C, Section 44(b), Third Revised Sheet No. 283.

⁴⁸ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 7.3(b), Original Sheet No. 126.

⁴⁹ See *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 27 (2004).

unscheduled maintenance is considered a *force majeure* event, scheduled maintenance and repairs are to be treated as non-*force majeure* events. Therefore, if Cimarron determines that the term refers to a planned or scheduled event, we will require Cimarron to remove it from its *force majeure* provisions. If Cimarron determines that the term refers to unplanned or unscheduled maintenance, we will require Cimarron to identify the term “maintenance” as unplanned or unscheduled.

Section 11.2 – Scheduling Procedures

70. Sections 11.2(c)⁵⁰ and 11.2(d)⁵¹ of Cimarron’s proposed tariff appear to accord a higher priority to interruptible service than to overrun service in the event nominations for service exceed available capacity. This priority is not consistent with our policy, since the Commission considers authorized overrun and interruptible service to be identical, and has held that pipelines must revise their tariffs so that interruptible and overrun services are accorded the same scheduling priority.⁵² Furthermore, the authorized overrun service rate in Cimarron’s Statement of Effective Transportation Rates⁵³ is equal to the rate paid by Cimarron’s interruptible transportation customers. Therefore, Cimarron must revise its proposed tariff to provide the same priority to overrun service as provided to interruptible service.

71. Section 11.2(d)(ii) of Cimarron’s proposed tariff states that:

When allocation of capacity is necessary at a specific Receipt Point or Delivery Point, capacity will be allocated in the following order:

(ii) Transportation service at Secondary Receipt and Delivery Points and at Primary Receipt and Delivery Points that exceed MDRQ or MDDQ under

⁵⁰ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 11.2(c), Original Sheet No. 135.

⁵¹ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 11.2(d), Original Sheet Nos. 135-136.

⁵² See *Cheniere Creole Trail Pipeline, L.P.*, 121 FERC ¶ 61,071, at P 39 (2007).

⁵³ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Statement of Effective Transportation Rates, Original Sheet No. 7.

Shipper's FT TSA.⁵⁴

72. Though Cimarron clarifies that any volumes that flow in excess of the primary point quantity are considered secondary firm up to the maximum contract quantity,⁵⁵ the provision in section 11.2(d)(ii), as currently written, could provide a priority for services that exceed the contract quantity set forth in a shipper's TSA. Therefore, we will require Cimarron to revise section 11.2(d)(ii) of the GT&C of its proposed tariff so that volumes that flow in excess of the primary point quantity are considered secondary firm up to the maximum contract quantity.

Section 11.5 – Limitations on Transporter's Obligations to Provide Services

73. Section 11.5 of Cimarron's proposed tariff states, in part, that:

Transporter may reduce receipts or deliveries of natural gas in conjunction with the throughput capacity under TSAs on part or all of Transporter's system according to the above (1) to permit maintenance, repairs, overhauls, replacements or construction of pipelines, compressors, metering, regulators, and other equipment; ... Transporter shall provide affected Shippers reasonable advance notice of planned outages due to preventive maintenance, repairs, overhauls or replacements.⁵⁶

74. Cimarron's proposal as to a non-*force majeure* or a planned maintenance event does not appear to provide for any credit for service failure. The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a planned maintenance event or non-*force majeure* event, the failure was due to the pipeline's conduct and was within its control.⁵⁷ In that case, there must be a full reservation charge adjustment as to the undelivered amount. Moreover, in *Florida Gas*

⁵⁴ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 11.2(d)(ii), Original Sheet No. 135.

⁵⁵ Cimarron, December 20, 2007 Answer at 18.

⁵⁶ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 11.5, Original Sheet Nos. 138 and 139.

⁵⁷ See *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 13 (2003). See also *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 (1996), *order on reh'g*, 80 FERC ¶ 61,070 (1997).

Transmission Co.,⁵⁸ the Commission reaffirmed this policy and stated that “providing only partial credits related to non-*force majeure* interruption of service is inconsistent with Commission policy.” Furthermore, in *Entrega Gas Pipeline, Inc.*,⁵⁹ the Commission reasoned that since the pipeline would not provide for any credit within a specified number of days of service failure and only a partial credit after a certain date during non-*force majeure* or planned maintenance event, its proposed reservation charge adjustment needed to be modified. Therefore, Cimarron must revise section 11.5 of its proposed tariff to provide full reservation charge credits in the event scheduled gas is not delivered due to a planned maintenance event or non-*force majeure* event.

Section 13.2 – Resolution of Monthly Imbalances

75. Section 13.2(c) of Cimarron’s proposed tariff states that:

If on any day Transporter determines that Shipper’s cumulative actual receipts (adjusted for Fuel Reimbursement) and cumulative actual deliveries are out of balance in excess of 5 percent of scheduled deliveries for the month and Shipper fails to take corrective action as stated in Subsection 13.2(b), Transporter may adjust Shipper’s nominations, receipts, and deliveries over the remainder of the month or any shorter period deemed necessary by Transporter to restore a balance of receipts and deliveries.⁶⁰

76. Cimarron’s proposed balancing provision is based on Dauphin Island’s currently-effective tariff;⁶¹ however, unlike Cimarron’s proposed tariff, Dauphin Island’s tariff provides for a two day prior notice period to shipper by telephone, followed by a written confirmation. The notice period is a reasonable provision because it provides shippers advance notice to take action to correct the imbalances. Therefore, we will accept Cimarron’s proposed balancing provision in section 13.2(c) of its tariff, subject to Cimarron adding language providing a reasonable notice period and specifying the means by which the notice may be provided.

⁵⁸ See *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 34 (2003).

⁵⁹ See *Entrega Gas Pipeline, Inc.*, 112 FERC ¶ 61,177, at P 56-59 (2005) .

⁶⁰ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 13.2(c), Original Sheet No. 145.

⁶¹ See Dauphin Island Gathering Partners (Dauphin Island), FERC Gas Tariff, First Revised Vol. No. 1, GT&C, Section 13.2(b), First Revised Sheet No. 176; and Section 13.2(c), Substitute Third Revised Sheet No. 177.

Section 13.3(d) – Cash Out Procedures

77. Section 13.3(d) of Cimarron's proposed tariff states, in part, that:

Index Price: The Index Price shall be determined each month using the daily spot gas prices for the area of Transporter's system as published in Gas Daily. Transporter will determine the simple average of the Gas Daily Price Survey index prices published for Panhandle, TX – Oklahoma for each delivery month⁶²

78. Although Cimarron proposes to determine its cash-out index price for its cash-out mechanism by using the daily spot gas prices for the area of its system, its tariff fails to state the specific individual points that it will use in calculating its cash-out index price. Therefore, consistent with other pipelines' cash out provisions,⁶³ we will require Cimarron to clearly state in its proposed tariff which specific index it intends to use in determining the cash-out price.

79. Further, the Commission has previously held that the prospective use of any index in jurisdictional tariffs must meet the criteria set forth in the Price Index Policy Statement for price index developers and reflect adequate liquidity at the referenced location to be reliable.⁶⁴ Therefore, we will require Cimarron to file this information in its compliance filing, along with supporting documentation, to show that its index is in compliance with the Price Index Policy Statement.

⁶² Cimarron, FERC Gas Tariff, Pro Forma Vol. No.1, GT&C, Section 13.3(d), Original Sheet No. 147.

⁶³ See, e.g., Gulfstream Natural Gas System, L.L.C., FERC Gas Tariff, Original Vol. No. 1, GT&C, Section 8.7(a), Original Sheet No. 139; Dauphin Island Gathering Partners, FERC Gas Tariff, First Revised Vol. No. 1, GT&C, Section 13.3(d), Second Revised Sheet No. 180.

⁶⁴ See *Price Discovery in Natural Gas and Electric Markets*, 104 FERC ¶ 61,121, at P 41 (2003) (Price Index Policy Statement).

Section 24 – North American Energy Standards Board (NAESB)

80. Cimarron's proposed tariff incorporates most of the North American Energy Standards Board (NAESB) Version 1.7 standards by reference,⁶⁵ and includes other standards in the text of the tariff verbatim. Though Cimarron has generally complied with the requirements of Order No. 587-S,⁶⁶ we will require Cimarron to make changes to several standards as described below.

81. NAESB capacity release related standards 5.3.34 and 5.3.35 require Transportation Service Providers to provide affected parties with notification of intraday bumps, operational flow orders and other critical notices through the affected party's choice of Electronic Notice Delivery Mechanism(s). Cimarron's implementation of the standard in its tariff provides parties with notification only for bumping.⁶⁷ Therefore, the Commission will require Cimarron to revise section 11.1(m) to provide parties with notification of operational flow orders and other critical notices, in addition to the notices provided for bumping.

82. Cimarron requests a conditional extension of the EDI/EDM and FF/EDM processing requirements relating to NAESB Version 1.7 standards for up to 90 days from the date any person first requests use of a NAESB data set that Cimarron does not currently support.⁶⁸ The Commission has previously granted pipelines a conditional extension of time to implement the EDI/EDM and FF/EDM data sets.⁶⁹ Therefore, we

⁶⁵ Cimarron, FERC Gas Tariff, Pro Forma Vol. No.1, GT&C, Section 24, Original Sheet No. 175.

⁶⁶ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, 70 Fed. Reg. 28,204 (May 17, 2005), FERC Stats. & Regs. ¶ 31,179 (2005).

⁶⁷ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 11.1(m), Original Sheet Nos. 132 and 133.

⁶⁸ The NAESB Version 1.7 Standards for which Cimarron requests an extension are: 4.2.11, 4.2.12, 4.2.18, 4.2.19, 4.2.20, 4.3.2, 4.3.8, 4.3.9, 4.3.10, 4.3.11, 4.3.12, 4.3.13, 4.3.14, 4.3.15, 4.3.55, 4.3.81, 4.3.82, 4.3.83, 4.3.84, 4.3.86, 4.3.87, 4.3.88, 5.3.10, 5.3.31, 5.3.32, 5.3.33 and 5.3.43.

⁶⁹ See, e.g., *Dominion South Pipeline Co.*, 113 FERC ¶ 61,064, at P 32-34 (2005); *Saltville Gas Storage Co. L.L.C.*, 109 FERC ¶ 61,200, at P 36-37 (2004); and *Tennessee Gas Pipeline Co.*, 100 FERC ¶ 61,340, at P 3-4 (2002).

will grant Cimarron a conditional extension of the EDI/EDM and FF/EDM requirements as set forth in NAESB Version 1.7 for up to 90 days from the date any person first requests use of a NAESB data set that Cimarron does not currently support.

Negotiated Rates

83. In its transmittal letter, Cimarron states shippers will have an option to pay the cost-based recourse rates or negotiated rates for service.⁷⁰ The transmittal letter also states that prior to the commencement of service, it will file with the Commission either the service agreement itself or numbered tariff sheets stating the name of any shipper paying a negotiated rate, the negotiated rate, the applicable rate schedule, contract quantities, the applicable receipt and delivery points, and an affirmation that the negotiated rate agreement does not deviate in any material aspect from the applicable form of service agreement in its tariff.⁷¹ For negotiated rate transactions, Cimarron agrees to maintain separate and identifiable accounts for any quantities of gas transported at negotiated rates, billing determinants, rate components, surcharges, and revenue associated with its negotiated rates in sufficient detail so they may be identified in any future rate cases.⁷² Cimarron further notes that non-conforming service agreements will be filed with the Commission pursuant to section 154.1(d) of the Commission's regulations.⁷³

84. Though Cimarron discusses negotiated rate provisions in its transmittal letter, in section 1(ab) of the GT&C of its tariff,⁷⁴ and in sections 4.4 of Rate Schedules FT and IT,⁷⁵ Cimarron did not include a provision in the GT&C that clearly states how it will

⁷⁰ Cimarron Application at 15.

⁷¹ *Id.* at 16.

⁷² *Citing Millennium Pipeline Co., L.L.C. et al.*, 117 FERC ¶ 61,319, at P 109 (2006); *Northern Natural Gas Co., et al.*, 117 FERC ¶ 61,117 (2006), *reh'g granted*, 119 FERC ¶ 61,035, at P 33 (2007).

⁷³ *Citing* 18 C.F.R. § 154.1(d) (2008).

⁷⁴ Cimarron, FERC Gas Tariff, Pro Forma Vol. No. 1, GT&C, Section 1(ab), Original Sheet No. 103.

⁷⁵ Cimarron, FERC Gas Tariff, Pro Forma Vol. No.1, Rates and Charges, Section 4.4, Original Sheet Nos. 13-14, 21.

comply with the Commission's negotiated rate policies which require that a pipeline, when entering into a negotiated agreement, file with the Commission either the service agreement or numbered tariff sheets stating the name of any shipper paying a negotiated rate, the negotiated rate, contract quantities, the applicable receipt and delivery points, and an affirmation that the negotiated rate agreement does not deviate in any material aspect from the applicable form of service agreement.⁷⁶ Therefore, we will require Cimarron to incorporate tariff language indicating how it will comply with our negotiated rate policy. In addition, section 154.312 of the Commission's regulations⁷⁷ requires a pipeline to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case. Therefore, Cimarron is ordered to comply with this record keeping requirement.

Standards of Conduct

85. On January 19, 2007, the Commission issued an Interim Rule⁷⁸ promulgating interim standards of conduct regulations that govern the relationship between natural gas transmission providers and their marketing affiliates.⁷⁹ The Commission issued the Interim Rule in response to the decision of the United States Court of Appeals for the District of Columbia Circuit⁸⁰ concerning the Standards of Conduct for Transmission Providers under Order No. 2004.⁸¹ The purpose of the Interim Rule was to repromulgate

⁷⁶ See, e.g., Gulfstream Natural Gas System, L.L.C., FERC Gas Tariff, Original Vol. No. 1, GT&C, Section 31.2, First Revised Sheet No. 200.

⁷⁷ 18 C.F.R. § 154.312 (2008).

⁷⁸ *Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,327, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007) (Interim Rule). See also Notice of Proposed Rulemaking, 73 Fed. Reg. 16,228 (Mar. 27, 2008), FERC Stats. & Regs. ¶ 32,630 (2008) (NOPR).

⁷⁹ 18 C.F.R. Part 358 (2008).

⁸⁰ *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

⁸¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order

(continued)

the Standards of Conduct not challenged in the court of appeals in the interim while the Commission considered how to respond to the court's decision on a permanent basis. For issues that were appealed to the court of appeals, the Commission sought to avoid a regulatory gap and adopted the pre-Order No. 2004 requirements of Order No. 497.⁸²

86. Cimarron states that upon closing of the acquisition, DCP will be the managing member of Cimarron.⁸³ In addition, Cimarron asserts that since DCP will not be a marketing affiliate of Cimarron as defined in the Interim Rule, it does not anticipate conducting any transportation transactions with marketing affiliates, and thus should not be required to comply with the Standards of Conduct.⁸⁴ However, Cimarron asserts that if it does commence transportation transactions with a marketing affiliate or the regulations change, it will comply as required.

87. Although Cimarron contends that it should not be required to comply with the Standards of Conduct because it will have no transportation transactions with a marketing affiliate, Cimarron's Application indicates that DCP's transportation volumes currently represent about 78 percent of the current firm volumes on the system, and following the transfer, DCP will seek to acquire approximately the same amount of transportation on Cimarron.⁸⁵ Therefore, it appears that DCP will be engaged in transportation transactions with Cimarron. However, the application does not clearly state either the nature of the business DCP will be undertaking or to what extent DCP will be buying and selling gas. Accordingly, Cimarron must explain whether DCP is engaging in any sales

No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom., National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

⁸² See Order No. 690-A at P 12 and 18 C.F.R. § 358.3(k)(1) and 18 C.F.R. § 358.3(l) (2008). In the NOPR, the Commission proposed to adopt a functional approach, which includes eliminating the definition of "marketing affiliate," but adding a definition for "marketing function employee." NOPR at P 35 and proposed section 385.3(c).

⁸³ Cimarron states that DCP is a wholly-owned, indirect subsidiary of the holding company DCP Midstream, LLC, which in turn is owned 50 percent by Spectra Energy Corporation subsidiaries and 50 percent by ConocoPhillips Gas Company.

⁸⁴ Cimarron Application at 14.

⁸⁵ Cimarron Application at 20.

for resale of natural gas. To the extent DCP is making such sales, Cimarron must explain why it claims that DCP is not a marketing affiliate, as that term is defined in sections 358.3(e) and (k) of the Commission's regulations, 18 C.F.R. §358.3(e) and (k) (2008).

C. Accounting

88. Northern states that it proposes to convey the subject facilities to Cimarron at Northern's net book value of approximately \$22 million. DCP will then purchase the membership interests in Cimarron for approximately \$50 million.

89. According to Cimarron's March 17, 2008 data response, the acquisition adjustment amount of \$27,401,229 included in Account 114, Gas Plant Acquisition Adjustments,⁸⁶ is not used to compute its cost of service.⁸⁷

90. The applicants' journal entries recording the sale must comply in all respects with the Commission's Uniform System of Accounts. Accordingly, we will require the applicants to submit their proposed accounting for all aspects of the sale transaction when they file their proposed journal entries to clear the amounts recorded in Account 102 within six months of the date the sale is consummated.⁸⁸ The filings should provide a complete explanation of the basis for the proposed accounting with reference to applicable Commission accounting regulations and/or relevant accounting standards of the Financial Accounting Standard Board and be of such detail as to show the complete transaction and all accounts affected, including related income tax accounts.

⁸⁶ See Cimarron's Exhibit P, Schedule 9 (Original Cost of Acquired Facilities as of December 31, 2006), Line No. 20, Acquisition Adjustment, in Docket No. CP08-17-000 filed on November 2, 2007.

⁸⁷ In Cimarron's March 17, 2008 data response narrative of Attachment 2, Accounting Entries for the Amortization of Gas Plant Acquisition Adjustments, it asserts that none of the amounts related to the Gas Plant Acquisition Adjustments, which are recorded in Accounts 114, 115 and 406, will be a component of the cost of service.

⁸⁸ 18 C.F.R. Part 201, Account 102(B) (2008) (Within six months from the date of acquisition or sale of property recorded herein, the utility shall file with the Commission the proposed journal entries to clear from this account the amounts recorded herein.)

D. Environmental Review

91. The Commission staff independently evaluated environmental information submitted by the applicants and concluded that these actions qualify as categorical exclusions under the Commission's regulations.⁸⁹ However, staff noted in its environmental comments⁹⁰ that Northern has certain clean-up obligations for contaminated locations included with the facilities to be transferred, and Cimarron has agreed, as the new operator of the subject facilities, to perform remediation measures in compliance with all laws, permits, rules, codes, ordinances, requirements, and regulations of all federal, state or local agencies. In addition, Northern filed a status update of its progress with the remediation efforts at these facilities.

Conclusion

92. For the reasons discussed above, and with the conditions imposed by this order, the Commission concludes that the authorizations requested herein are in the public convenience and necessity.

93. At a hearing held on July 17, 2008, the Commission on its own motion received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP08-18-000, the request by Northern for abandonment authority is granted, subject to the conditions described herein.

(B) In Docket No. CP08-17-000, a certificate of public convenience and necessity is issued to Cimarron authorizing Cimarron to acquire and operate the Beaver

⁸⁹ The abandonment authority qualifies as a categorical exclusion pursuant to 18 C.F.R. § 380.4(a)(31) (2008). Certificate authority under Part 157, Subpart F qualifies as a categorical exclusion pursuant to 18 C.F.R. § 380.4(a)(21) (2008). Certificate authority under Part 284, Subpart G qualifies as a categorical exclusion pursuant to 18 C.F.R. § 380.4(a)(22) (2008).

⁹⁰ *Cimarron River Pipeline, LLC, Docket No. CP07-17-000 and Northern Natural Gas Company, Docket No. CP08-18-000, ENVIRONMENTAL CONSIDERATIONS OR COMMENTS*, June 3, 2008.

Wet System, subject to the conditions described herein.

(C) Cimarron's acquisition of the subject facilities granted by Ordering Paragraph (B) shall be completed and the facilities made available for service within 12 months from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(D) In Docket No. CP08-17-000, a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations and a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations are issued to Cimarron.

(E) The certificate issued in Ordering Paragraph (B) is conditioned upon Cimarron's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the provisions set forth in Parts 154, 157 and 284, and paragraphs (a), (d), (e) and (f) of section 157.20 of the regulations.

(F) Cimarron must submit actual tariff sheets that comply with the requirements contained in the body of this order no less than 30 days or more than 60 days prior to the commencement of interstate service.

(G) Cimarron shall revise its recourse rates in accordance with the discussion in the body of this order and file the rates and work papers supporting the revised recourse rates in conjunction with the filing of tariff sheets required in Ordering Paragraph (F).

(H) At the end of its first three years of operation, Cimarron must make a filing to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Cimarron's approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data. In the alternative, in lieu of such filings, Cimarron may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(I) As asserted in its application, upon the close of the asset sale Northern shall file to revise its Field Area fuel rates to reflect the abandonment of the compressor units to Cimarron.

(J) Northern shall notify the Commission within 10 days of the date of abandonment of the facilities.

(K) Applicants must comply with Gas Plant Instruction No. 5, Gas Plant

Purchased or Sold, and Account 102, Gas Plant Purchased or Sold, and to file their final journal entries to clear Account 102 no later than six months after the completion of the transaction. The accounting submission must provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

(L) Cimarron must explain whether DCP is engaging in any sales for resale of natural gas and, to the extent DCP is making sales for resale, why it claims DCP is not a marketing affiliate, as discussed in the body of this order.

(M) The motions for late intervention are granted.

(N) The answers to protests and answers are accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.