

128 FERC ¶ 61,253  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Express Pipeline LLC

Docket Nos. CP08-6-002  
CP09-56-000

ORDER AMENDING CERTIFICATE AND ISSUING CERTIFICATE

(Issued September 17, 2009)

1. On December 30, 2008, Midcontinent Express Pipeline LLC (Midcontinent) filed in Docket No. CP08-6-002 an application under section 7(c) of the Natural Gas Act (NGA) to amend the certificate issued on July 25, 2008, in Docket No. CP08-6-000.<sup>1</sup> Midcontinent proposes to move one compressor station in Mississippi and modify the facilities at another station in Texas that were among the facilities authorized in the 2008 order.
2. On January 29, 2009, Midcontinent filed in Docket No. CP09-56-000 an application under section 7(c) of the NGA for authorization to expand the capacity of Zone 1 of its system by 300,000 dekatherms per day (Dth/d), to 1,832,500 Dth/d, by increasing the horsepower (hp) at three previously-certificated compressor stations located in Texas and Mississippi, including the stations that are the subject of Midcontinent's application in Docket No. CP08-6-002 (Midcontinent Expansion Project).
3. We are addressing Midcontinent's proposals in Docket No. CP08-6-002 and Docket No. CP09-56-000 in a single order with a single environmental assessment (EA) because the two proposals concern common facilities and doing so will not compromise the construction schedules of either project. For the reasons set forth below, we are granting the requested authorizations, subject to conditions.

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<sup>1</sup> *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008) (2008 order), *order denying reh'g and granting clarification*, 127 FERC ¶ 61,164 (2009).

## **Background**

4. Midcontinent is a Delaware limited liability company jointly owned by Kinder Morgan Energy Partners, L.P. and ETC Midcontinent Express Pipeline LLC, a subsidiary of Energy Transfer Partners, L.P.

5. In the 2008 order, we authorized Midcontinent to construct and operate a 506-mile pipeline, consisting of 30-inch, 36-inch, and 42-inch diameter pipe, extending from southeastern Oklahoma to western Alabama. The 2008 order also authorized Midcontinent to lease up to 272,000 Dth/d of capacity on the Oklahoma intrastate pipeline system of Enogex Inc. (Enogex). As authorized, Midcontinent's system comprises two capacity zones in addition to the Enogex leased capacity. When completed, Zone 1 will extend approximately 308 miles from the interconnection with Enogex at Bennington, Oklahoma to an interconnection with Columbia Gulf Transmission Company (Columbia Gulf) near Delhi, Madison Parish, Louisiana and will have a capacity of 1,532,500 Dth/d. Zone 2 will extend from near the Columbia Gulf interconnect approximately 198 miles east to the Midcontinent terminus at an interconnection with Transcontinental Gas Pipe Line Company, LLC (Transco) at its Station 85 near Butler in Choctaw County, Alabama and will have a capacity of 1,200,000 Dth/d.

6. The 2008 order authorized Midcontinent to construct its system in two phases – an initial phase and an expansion phase. In addition to the 506 miles of pipeline facilities, the initial phase includes two mainline compressor stations – the Lamar Compressor Station in Lamar County, Texas and the Perryville Compressor Station in Union Parish, Louisiana. The expansion phase consists of two additional mainline compressor stations – the Atlanta Compressor Station in Cass County, Texas, and the Vicksburg Compressor Station in Warren County, Mississippi. Midcontinent began interim service on April 10, 2009, and full initial phase service on August 1, 2009. Midcontinent states that it anticipates full expansion phase service to begin on or about June 1, 2010.

## **Proposals**

### **Docket No. CP08-06-002 – Request to Amend Certificate**

7. In Docket No. CP08-6-002, Midcontinent proposes to amend the authorization granted in the 2008 order: (1) to move the Vicksburg Compressor Station from its originally-certificated location in Warren County, Mississippi to a new location approximately 3.5 miles downstream and east, in Hinds County, Mississippi and (2) to substitute different compressor units for the two originally authorized at the Atlanta Compressor Station in Cass County, Texas. The Vicksburg and the Atlanta Compressor Stations are both part of the expansion phase of Midcontinent's project.

8. Midcontinent states that it is requesting authorization to change the location of the Vicksburg Compressor Station because the originally-certificated location is in a low area that is prone to flooding, and it has been unable to finalize an agreement with the landowner.

9. Midcontinent also requests authorization to install two Caterpillar G16 compressor units, totaling 16,360 hp at the Atlanta Compressor Station in place of the two G12 compressor units totaling 12,270 hp, that were approved in the 2008 order. Midcontinent states that it has been unable to obtain the G12 units on a schedule that would enable it to meet its contemplated June 2010 in-service date. Further, Midcontinent explains that installing the G16 units as part of the expansion phase of its original project will provide costs and scheduling benefits to its anticipated Midcontinent Expansion Project.<sup>2</sup> Midcontinent proposes to operate the G16 units at a capacity not to exceed the certificated level of 12,270 hp until such time that Midcontinent receives authorization from the Commission to operate the G16 units at a higher capacity. Midcontinent does not propose any change to its authorized initial rates.<sup>3</sup>

### **Docket No. CP09-56-000 - Midcontinent Expansion Project**

#### **Facilities**

10. In Docket No. CP09-56-000, Midcontinent requests authorization to construct and operate additional facilities at three existing compressor stations<sup>4</sup> in order to expand the

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<sup>2</sup> In its May 28, 2009 response to staff data request No. 2, Midcontinent states that if it proceeds to install the two G12 units at the Atlanta Compressor Station in conjunction with the expansion phase of its original project, it would have to install an additional compressor unit at the Atlanta Compressor Station which would add over \$10 million in costs to that project.

<sup>3</sup> In its May 28, 2009 response to staff data request No. 2, Midcontinent explains that the increase in the cost of installing two G16 units instead of two G12 units is \$678,624, and that Midcontinent did not propose to increase its expansion phase rates to reflect the increased costs since operation of the G16 units will be capped at the certificated hp level associated with the G12 units. In addition, Midcontinent states that the cost-of-service impact associated with this minimal capital difference would not have resulted in a change in Midcontinent's rates.

<sup>4</sup> In addition, Midcontinent will install, pursuant to section 2.55(a) of the Commission's regulations, one new inlet filter/separator at the existing Perryville Compressor Station. Midcontinent will also expand the delivery capacity of the existing Columbia Gulf Meter Station to 542,000 Dth/d, from 500,000 Dth/d as described in the original certificate application, without the construction of new facilities.

capacity of Zone 1 of its system by 300,000 Dth/d, from 1,532,500 Dth/d to 1,832,500 Dth/d.<sup>5</sup> Specifically, Midcontinent proposes to: (1) install one 6,135 hp G12 compressor unit at the Lamar Compressor Station; (2) increase the certificated level of operation of the two G16 compressor units proposed in Docket No. CP08-6-002 to be installed at the Atlanta Compressor Station by a total of 4,090 hp – from the existing, certificated level of 12,270 hp to their rated total of 16,360 hp; and (3) install one additional 6,135 hp G12 compressor unit at the Vicksburg Compressor Station.<sup>6</sup> The estimated cost of the project is approximately \$82 million.

11. Midcontinent states that the Midcontinent Expansion Project will increase long-haul, firm transportation takeaway capacity either directly or indirectly from producing regions in Texas, Oklahoma, and Arkansas,<sup>7</sup> including the Barnett Shale, Woodford Shale, Fayetteville Shale, the Anadarko and Arkoma Basins, and Bossier Sands.

12. Midcontinent states that it held an open season between June 18 and July 9, 2008, and subsequently entered into two long-term, firm transportation precedent agreements with non-affiliated shippers for the entire 300,000 Dth/d of capacity on the Midcontinent Expansion Project.

### **Rates**

13. Midcontinent proposes to provide firm transportation service pursuant to its Rate Schedule FTS. Midcontinent states that one shipper has agreed to pay a negotiated rate during the entire term of its contract and the other shipper has agreed to pay the maximum recourse rate during the entire term of its contract. According to

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<sup>5</sup> Midcontinent anticipates an in-service date of December 1, 2010 for the Midcontinent Expansion Project.

<sup>6</sup> Midcontinent is proposing to install gas-fired, reciprocating compressor units rather than gas-fired turbine units. Midcontinent states that such reciprocating engines are not presently viable for waste heat recovery, thus, it is not considering waste heat electric generation for the compressor sites at this time.

<sup>7</sup> No part of the Midcontinent system is located in Arkansas. However, states Midcontinent, an interconnection with Natural Gas Pipeline Company of America in Cass County, Texas can potentially provide Arkansas gas supplies, including Fayetteville Shale gas, access to the Midcontinent system.

Midcontinent, the negotiated rate was executed pursuant to section 30 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff.<sup>8</sup>

14. Midcontinent seeks a determination that it would be appropriate to roll the costs of its Midcontinent Expansion Project facilities into existing rates. In conjunction with its request for rolled-in rate treatment, Midcontinent filed pro-forma tariff sheets that would result in Midcontinent revising its previously-authorized fuel and tariff recourse rates at the time the Midcontinent Expansion Project goes into service. Midcontinent provided a rolled-in rate analysis that shows existing shippers will benefit by approximately \$13.1 million annually based on its January 9, 2009 updated cost filing.<sup>9</sup>

### **Notice and Interventions**

15. Notice of Midcontinent's application in Docket No. CP08-6-002 was published in the *Federal Register* on January 21, 2009 (74 FR 3583). No timely motions to intervene, notices of intervention, or protests were filed in this proceeding.

16. Notice of Midcontinent's application in Docket No. CP09-56-000 was published in the *Federal Register* on February 19, 2009 (74 FR 7682). Lisa Jones filed a timely, unopposed intervention in Docket No. CP09-56-000. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>10</sup>

17. John Michael Hanner filed an unopposed motion to intervene out of time in both dockets. Mr. Hanner has shown an interest in this proceeding, and his intervention at this stage of the proceeding will not delay or disrupt the proceedings or unfairly prejudice the rights of any other party. Accordingly, for good cause shown, we will permit his late intervention.<sup>11</sup> The comments of Ms. Jones and Mr. Hanner concern environmental

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<sup>8</sup> To the extent any agreements with the expansion customers contain non-conforming provisions, Midcontinent must file the executed service agreements for Commission approval as required by section 154.112 (b) of the Commission's regulations.

<sup>9</sup> On March 25, 2009, the Commission issued an order revising the initial rates for Midcontinent's original project to reflect increases in the actual and projected costs included in Midcontinent's January 9, 2009 updated cost filing in Docket No. CP08-6-003. *See Midcontinent Express Pipeline LLC*, 126 FERC ¶ 61,271 (2009).

<sup>10</sup> 18 C.F.R. § 385.214(c)(1) (2009).

<sup>11</sup> 18 C.F.R. § 385.214(g) (2009).

issues related to the Lamar and Atlanta Compressor Stations, respectively. All environmental issues, including those concerns raised by the intervenors, are addressed in the environmental assessment (EA) for the projects.

### **Discussion**

18. Because the facilities proposed by Midcontinent will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation are subject to the requirements of sections 7(c) and (e) of the NGA.

### **Certificate Policy Statement**

19. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.<sup>12</sup> The Certificate 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 Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

20. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered.

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<sup>12</sup>*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

21. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. No additional costs are included for the amendment proposal in Docket No. CP08-6-002. Thus, no existing shippers will subsidize the amended project.

22. For the Midcontinent Expansion Project proposed in Docket No. CP09-56-000, Midcontinent proposes to use an initial recourse rate derived by rolling the costs of the Midcontinent Expansion Project into the previously-approved expansion phase rates. As discussed below, rolling the Midcontinent Expansion Project's costs into the previously-approved expansion phase rate will result in lower rates for existing customers. Thus, existing shippers will not subsidize the Midcontinent Expansion Project.

23. There will be no adverse operational impact on Midcontinent's existing customers as a result of the proposal in Docket No. CP08-6-002, which does not result in any change in service. Nor will there be any adverse operational impact as a result of the construction and operation of the Midcontinent Expansion Project, since the project is properly designed to meet the request for up to 300,000 Dth/d of firm transportation service in Zone 1 without degrading service to existing customers.

24. There will be no adverse impact on existing pipelines and their customers as a result of the proposal in Docket No. CP08-6-002, as the requested authorization creates no new capacity. The Midcontinent Expansion Project in Docket No. CP09-56-000 is designed to create capacity to transport new supplies not currently available to existing pipelines that will be interconnected to Midcontinent. The project will benefit interconnecting pipelines and their customers by enhancing access to and transportation of such supplies. Further, there is no evidence that service on other pipelines will be displaced as a result of the proposed project and no pipeline objected to Midcontinent's proposals. For these reasons, we conclude that existing pipelines and their customers will not be adversely affected by the project.

25. Only the change in location of the Vicksburg Compressor Station, for which authorization is sought in Docket No. CP08-6-002, required obtaining new land rights. Midcontinent states that it purchased the property, obviating any need for the exercise of the right of eminent domain.<sup>13</sup> All other facilities proposed in the projects will be constructed within the boundaries of existing, certificated compressor station yards. Thus, no new easements are required. Therefore, we find that the effects on landowners and communities are minimal.

26. The proposal in Docket No. CP08-6-002 has only minimal adverse impacts and provides the benefit of less costly construction of the Midcontinent Expansion Project

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<sup>13</sup> See, Midcontinent's May 28, 2009 response to staff data request No. 7.

proposed in Docket CP09-56-000. Midcontinent has entered into long-term precedent agreements for 100 percent of the capacity of the Midcontinent Expansion Project. In addition, the Midcontinent Expansion Project will provide access to new, growing sources of natural gas supplies. Based on the benefits that these proposals will provide and the lack of any identified adverse impacts on Midcontinent's existing customers, other pipelines and their customers, and minimal impacts on landowners and communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Midcontinent's proposed projects.

### Rates

27. As noted above, Midcontinent proposes to roll the costs of the Midcontinent Expansion Project into the previously-approved rates for its expansion phase service. Midcontinent states that based on its updated January 9, 2009 cost filing, existing shippers paying recourse rates will experience annual savings of approximately \$13.1 million as a result of rolling in the costs and volumes associated with the Midcontinent Expansion Project.

28. Midcontinent's Exhibit Z-1, Part 1, shows that Midcontinent's previously-approved expansion phase Zone 1 transportation recourse rate will be reduced by 3.67 cents per Dth<sup>14</sup> as a result of rolling in the costs and volumes associated with the Midcontinent Expansion Project - from 38.43 cents per Dth to 34.76 cents per Dth. This will result in annual savings of \$20,528,604 for expansion phase Zone 1 shippers.

29. We have previously found that the cost of fuel must be included in the rolled-in analysis because it is an element of a shipper's transportation expense.<sup>15</sup> Exhibit Z-1, Part 1, shows that the increase in compression as a result of the Midcontinent Expansion Project will increase Midcontinent's Zone 1 fuel percentage by 0.19 percent, resulting in increased annual fuel costs of approximately \$7,439,521.<sup>16</sup> However, although the Midcontinent Expansion Project will result in a slight increase in the Zone 1 fuel rate, Midcontinent has shown that the net impact of the decrease in transportation rates and the increase in fuel costs as a result of rolling in the costs of the Midcontinent Expansion Project will be an overall annual reduction of \$13,089,083 to Zone 1 shippers.

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<sup>14</sup> Midcontinent's calculations are based on a 100 percent load factor.

<sup>15</sup> See, e.g., *Northern Border Pipeline Co.*, 80 FERC ¶ 61,152 (1997) (where the Commission interpreted the pricing policy statement to include the cost of fuel in the rolled-in rate analysis).

<sup>16</sup> Midcontinent's calculations are based on a fuel price of \$7.00 per Dth.

30. As indicated above, in conjunction with its request to roll the costs of the Midcontinent Expansion Project into the previously-approved expansion phase rates, Midcontinent filed pro forma Second Substitute Original Sheet Nos. 8 and 10 to its FERC Gas Tariff, Original Volume No. 1, reflecting the reduced transportation rates. Midcontinent states it will make a compliance filing to place such sheets into effect prior to the Midcontinent Expansion Project's going into service.

31. Once pipeline facilities have gone into service and the associated initial rates have gone into effect, a pipeline's rates may only be changed pursuant to section 4 or 5 of the NGA.<sup>17</sup> Here, although Midcontinent has commenced initial phase service on its system,<sup>18</sup> it has not yet commenced its authorized expansion-phase service, for which separate initial rates were approved in the 2008 order. Thus, we are able, in this section 7 proceeding, to approve initial rates for the Midcontinent Expansion Project service which reflect rolling the costs of that project into the previously-approved, but-as-yet-to-be-implemented expansion phase rates and which will replace the expansion phase rates approved in the 2008 order for all Zone 1 shippers upon the in-service date of the Midcontinent Expansion Project.<sup>19</sup>

32. Allowing Midcontinent to revise the previously-approved expansion phase rates as part of this proceeding to reflect the rolling in of the costs of the Midcontinent Expansion Project will result in reduced rates for Zone 1 shippers when the authorized new facilities go into service. Zone 1 shippers will not be required to wait until a future section 4 rate case to receive the benefits of the roll-in. Therefore, we will direct Midcontinent to file revised tariff sheets reflecting the revised recourse rates no less than 30 days, and no more than 60 days, prior to the commencement of service on the Midcontinent Expansion Project facilities.

33. Midcontinent's Exhibit Z-1 states that the Midcontinent Expansion Project only involves an increase to its Zone 1 capacity and that there will be no impact on the Zone 2 transportation rates and fuel percentages. However, Midcontinent's response to Request No. 5 of the Commission staff's May 14, 2009 data request states that in the future, Midcontinent proposes to first calculate a fuel rate for Zone 2 which includes the fuel burned at the Vicksburg Compressor Station and, should the resultant fuel percentage

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<sup>17</sup> *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165 (2008); *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089 (2008).

<sup>18</sup> See *Midcontinent Express Pipeline LLC*, April 13, 2009, Notice of Commencement of Service.

<sup>19</sup> This determination does not prevent ratepayers from challenging rolled-in rate treatment in a future rate case should there be a material change in circumstances.

exceed the 0.29 per cent Zone 2 fuel rate established in the 2008 order, the excess fuel burned above the 0.29 per cent level will be allocated to Zone 1 shippers. We are concerned that this methodology may result in Zone 2 shippers subsidizing the Midcontinent Expansion Project, if the Zone 2 fuel rate is below 0.29 per cent. The rolled-in rate determination made here is based on all of the costs of the expansion being allocated to Zone 1 and the fuel rate for Zone 2 not being affected. Therefore, we will direct Midcontinent to clearly show in its semi-annual fuel filing how the fuel burned at the Vicksburg Compressor Station as a result of the Midcontinent Expansion Project is clearly allocated to Zone 1 shippers.

34. Finally, Midcontinent's application includes First Revised Sheet No. 276, which adds a provision to Midcontinent's fuel procedures, as defined in section 36 of its GT&C, to allow for Out of Cycle Adjustments to the Fuel Gas Reimbursement Percentage, Lost and Unaccounted For Gas Percentage, and/or any specified Booster Compressor Fuel Charge. We reach no determination on the merits of this request in this NGA section 7 proceeding, and instead direct Midcontinent to seek to make this change in an NGA section 4 proceeding. This will ensure that Midcontinent's existing shippers have notice and an opportunity to file comments on the proposed change. Accordingly, we reject Midcontinent's proposed change to its fuel procedures without prejudice to Midcontinent refiling the proposed change in a future section 4 proceeding.<sup>20</sup>

### Accounting

35. Midcontinent proposes to start the accrual of Accumulated Funds Used During Construction (AFUDC) beginning November 2008 (three months prior to the January 29, 2009 filing of its certificate application in Docket No. CP09-56-000), and continuing through May 2011.<sup>21</sup>

36. Accounting Release No. 5 (AR-5), Capitalization of Interest During Construction,<sup>22</sup> states, in part, that AFUDC may be capitalized starting from the date that construction costs are continuously incurred on a planned progressive basis. AR-5 further provides that AFUDC should not be accrued for the period prior to the date of an

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<sup>20</sup> *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61, 259, at P 39 (2007).

<sup>21</sup> See Midcontinent's May 28, 2009 response to staff's May 14, 2009 data request related to Question No. 6, where Midcontinent provides a worksheet detailing its calculation of AFUDC.

<sup>22</sup> Accounting Releases are informal interpretations issued by the Chief Accountant to express his/her views as to the correct application of the provisions of the Uniform System of Accounts.

application to the Commission for a certificate to construct facilities by a natural gas company, unless justified by the company.<sup>23</sup>

37. Midcontinent has not provided any support to justify the accrual of AFUDC prior to the filing of its certificate application. Accordingly, we will require Midcontinent to remove the AFUDC improperly accrued prior to the date its certificate application was filed from the costs of the project. Further, we will require Midcontinent to revise its policies and procedures to ensure that it complies with the requirements of AR-5 in the future regarding the capitalization of AFUDC.

### **Environment**

38. On February 11, 2009, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed MEP Amendment Project and Request for Comments on Environmental Issues*. On March 24, 2009, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed MEP Amendment and Expansion Projects and Request for Comments on Environmental Issues* (NOI). We issued the March 24, 2009 NOI in order to consolidate our review of Midcontinent's application in Docket Nos. CP08-6-002 and its application in Docket No. CP09-56-000 under a single EA.

39. In response to the NOI, The Natural Resources Conservation Service provided information about the prime farmland soils potentially affected by the proposed modifications at the Atlanta and Lamar Compressor Stations and requested that a Farmland Conversion Impact Rating Form be completed for each station. The Louisiana Department of Wildlife and Fisheries stated that it did not have any objections to the proposed project. The Choctaw Nation of Oklahoma requested additional information about cultural resources surveys completed in Cass County, Texas and Hinds County, Mississippi.

40. In a letter dated March 13, 2009, the U.S. Fish and Wildlife Service (FWS) Region 2 expressed concerns about habitat loss and potential impacts to migratory bird species associated with the proposed modifications to the Atlanta Compressor Station, and recommended that areas designated for temporary impacts be replanted and managed to expedite their return to present habitat function.<sup>24</sup>

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<sup>23</sup> AFUDC accrued between November 2008 and the application filing date of January 29, 2009, is approximately \$140,000.

<sup>24</sup> In a telephone conversation record dated April 10, 2009, the FWS Arlington, Texas Field Office clarified that after review of more detailed aerial photographs of the Atlanta Compressor Station parcel and vicinity, the lands that would be impacted by the

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41. Ten comment letters were received from five private landowners, including Ditzler and Lisa Jones and Mr. Hanner.<sup>25</sup> The landowners expressed concerns about the location of the existing and proposed project facilities in the proximity of their homes, the potential noise and air quality impacts from the operation of the compressor stations, and associated impacts of compressor station construction and operation on nearby residences and wildlife.

42. Our staff prepared an EA for Midcontinent's proposal. The EA addresses geological resources; soils; water resources, wetlands and fisheries; vegetation and wildlife; cultural resources; land use, recreation and aesthetics; air quality and noise; and alternatives. The EA addressed all substantive issues raised in the comments in response to the NOI. The EA was issued for a 30-day public comment period and placed into the public record on July 29, 2009.

43. We received two comment letters on the EA. In its comment on the EA, the Texas Historical Commission indicated that no historic properties would be affected by the project. Midcontinent provided comments correcting information within the text of the EA to more accurately reflect information provided by Midcontinent in its application.

#### **Landowner comments relating to noise**

44. Ditzler and Lisa Jones, who reside on Highway 24, approximately 2,900 feet south-southwest of the Lamar Compressor Station in Lamar County, Texas, and whose residence is identified as noise-sensitive area (NSA) #10 in the EA, raise several concerns regarding both the actual and predicted noise levels resulting from the operation of the Lamar Compressor Station, both as currently authorized and as proposed to be expanded.<sup>26</sup>

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project appeared to be heavily fragmented and would have a lower habitat value than originally estimated in the March 13, 2009 letter.

<sup>25</sup> As noted above, Lisa Jones intervened in Docket No. CP09-56-000, and Mr. Hanner intervened in both Docket Nos. CP09-56-000 and CP08-6-002. All identifiable environmental concerns not discussed in the body of this order are fully addressed in the EA.

<sup>26</sup> The Joneses previously commented on the draft Environmental Impact Statement (EIS) issued in Docket No. CP08-6-000 regarding Midcontinent's ambient noise surveys and the associated modeled noise impacts of the Lamar Compressor Station conducted by Midcontinent and presented in the draft EIS. During the draft EIS period, the Joneses hired an outside noise consultant to take ambient noise readings. As a result of the Joneses' comments, Midcontinent conducted a 24-hour noise survey and later

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45. First, the Joneses maintain that the ambient noise values contained in Midcontinent's Noise Impact Comparison studies were too high, and specifically that the 57.6 dBA Ldn listed for their residence was inaccurate. The Joneses contend that a lower (quieter) value for ambient noise of 51.4 dBA Ldn based on findings of a June 2008 ambient noise survey conducted by Midcontinent<sup>27</sup> would be more appropriate for their residence. In a March 31, 2009 filing, Midcontinent agreed to accept the lower value of ambient noise assumed by the report (51.4 dBA Ldn) for the basis of determining relative noise impacts (i.e., total noise increases) at the Joneses' residence and another nearby residence. However, Midcontinent also stated that changing the assumed value of ambient noise would not affect its ability to demonstrate compliance of the modified Lamar Compressor Station with the Commission's noise criterion of 55 dBA Ldn at nearby NSAs. For reasons explained below, we agree.

46. The Joneses contend that total noise measured at their residence may exceed the 55 dBA Ldn standard when all compressor units at the Lamar Compressor Station are operated at full load. The Joneses' comments exhibit a misunderstanding about the difference between project-attributable noise and total noise levels (existing ambient combined with project-attributable) and how these noise levels relate to the Commission's noise threshold, which applies only to noise attributable to the operation of the compressor station. Project-attributable noise at the Jones residence (i.e., noise attributable to the Lamar Compressor Station when all units authorized under Docket Nos. CP08-6-000, CP08-6-002, and CP09-56-000 are operated at full load) is the only source of noise at the Jones residence that Midcontinent must demonstrate is no greater than 55 dBA Ldn. All other sources of noise (wind, insects, highway traffic, animals, etc.) are not project-attributable noise.

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agreed upon a lower than originally assumed value to describe the ambient noise conditions at the Joneses' residence. Several of the Joneses' filings in Docket No. CP09-56-000 involve complaints that predicted and actual noise levels resulting from the operation of compressors authorized under CP08-6-000 exceed our noise threshold of 55 dBA Ldn. Other comments filed in Docket No. CP09-56-000 include reports that compressors have been running prior to in-service, that the units already in operation are producing excessive noise and vibration, and a general displeasure that the Commission granted a time extension for the required noise testing after granting the in-service approval. To the extent the Joneses have raised matters that involve issues of compliance with environmental conditions in Docket No. CP08-6-000, they will be addressed outside the context of this proceeding.

<sup>27</sup> Midcontinent Express Pipeline Lamar Compressor Station Ambient Noise Survey at Jones and Martin Residences, June 23 to June 25, 2008, filed by Ditzler Jones on March 3, 2009.

47. Additionally, the Joneses are concerned that noise testing would not be conducted when all compressors authorized under Docket Nos. CP08-6-000, CP08-6-002, and CP09-56-000 are operated at full load.

48. As recommended in the EA and included in the list of environmental conditions in the appendix to this order, Midcontinent is required to demonstrate that noise from all compressors authorized under Docket Nos. CP08-6-000, CP08-6-002, and CP09-56-000, when operated at full load, does not exceed 55 dBA Ldn at any NSAs. If Midcontinent's initial operational noise survey finds that noise attributable to the Lamar Compressor Station exceeds 55 dBA Ldn at any nearby NSA, Midcontinent must install, within one year of the in-service date, additional noise control measures as necessary and conduct an additional noise survey in accordance with the environmental conditions contained in the appendix to this order to demonstrate that noise attributable to the Lamar Compressor Station has been reduced to a level no greater than 55 dBA Ldn at all nearby NSAs.

49. The Joneses also contend that the acceptable method of conducting a noise survey would be to measure the noise at the NSA, not at a point closer to the station extrapolating the results to nearby residences, including theirs.

50. Measuring noise at points closer to a compressor station where the noise from the station is the dominant noise source, and extrapolating the noise to nearby NSAs, is an acceptable and routinely utilized noise survey method for purposes of demonstrating compliance with the Commission's noise standard of 55 dBA Ldn. This survey method avoids inaccuracies that are likely to result if noise is measured at an NSA where compressor station noise is not the dominant noise source.<sup>28</sup> Pursuant to this survey methodology, the surveyor takes noise readings at a point along linear paths between the station and nearby NSAs, and mathematically extrapolates the measured noise to each NSA using hemispheric radiation (i.e., accounting for noise reduction due to distance) and atmospheric attenuation (i.e., accounting for noise loss due to the properties of air). The existing noise level may then be mathematically subtracted from the totaled measured noise. In many cases, noise extrapolated in this fashion overestimates the actual noise at the NSA, because other factors (e.g., shielding of objects including buildings, trees and foliage, topographical features, etc.) can further reduce noise levels attributable to the station at nearby NSAs.

51. Thomas and Judy Alspaugh state that their farm is two miles from the Atlanta Compressor Station, and that there are three other compressor stations within a one and a half mile radius of their property. They are concerned about potential impacts on air

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<sup>28</sup> Ambient noise varies throughout the day and throughout the year, whereas compressor noise is constant under normal operation, and under full load conditions represents the highest long-term noise levels expected from the facility.

quality and noise emissions resulting from the expansion of the Atlanta Compressor Station. The emission dispersion modeling analysis conducted as part of the EA demonstrates that emissions from the modified Atlanta Compressor Station would not result in a significant impact to ambient air quality.<sup>29</sup> In addition, based on noise impact analyses conducted by Midcontinent, the predicted noise increase 7,200 feet from the Atlanta Compressor Station would be 0.1 dBA Ldn.<sup>30</sup> Therefore, there should be no perceptible increase in noise at a distance of two miles (10,560 feet).

52. Another landowner, Gary L. Price, was concerned that noise and vibration from the Atlanta Compressor Station would adversely impact the biotic community that sustains soil productivity in the agricultural areas near that station. The EA concludes that the distance between the Atlanta Compressor Station and any active agricultural area is sufficient to dissipate the potential impacts to any biotic communities in active agricultural areas to less than significant levels.<sup>31</sup> From our experience with many other compressor stations, we are not aware of any evidence indicating that noise and vibration from compressor station operation has adversely impacted soil organisms or small invertebrates living in soils, or soil productivity in general.

### **Alternative Sites**

53. Mr. Hanner, an intervenor in both dockets, asks the Commission to reconsider relocating the site of the Atlanta Compressor Station to a less populated area of the county. Mr. Hanner states that he, as well as a number of other landowners, did not become aware of the location of this particular station until after the Commission approved the project in Docket No. CP08-6-000.

54. A detailed evaluation of an alternative site for the Atlanta Compressor station was conducted in Docket No. CP08-6-000. In the final EIS in that proceeding, we found that the site of the Atlanta Compressor Station, as certificated, was environmentally preferable to the evaluated site alternatives. The Commission and Midcontinent notified landowners within 0.5 miles of the site of the proposed Atlanta Compressor Station, notified local media outlets of the environmental review, and held open houses and comment meetings to facilitate stakeholder input. Our records indicate that Mr. Hanner's property is more than 0.5 miles from the proposed, and approved, site. The proposed actions at the Atlanta Compressor Station that are evaluated in the EA in these proceedings include only actions within the certificated, and at least partially

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<sup>29</sup> See EA, p. 2-12 and Tables 2.7.1-3 and 2.7.1-4.

<sup>30</sup> *Id.*, Table 2.7.2-2.

<sup>31</sup> See *id.*, at section 2.2, p.2-2.

constructed, Atlanta Compressor Station. Accordingly, site alternatives for the proposed modifications would be neither feasible nor environmentally preferable.

55. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Midcontinent's application and supplements and in compliance with the environmental conditions in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

56. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction, replacement, or operation of facilities approved by this Commission.<sup>32</sup>

57. At a hearing held on September 17, 2009, the Commission on its own motion, received and made a part of the record all evidence, including the applications, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) The certificate issued in the 2008 order is amended to authorize Midcontinent to install different compressor units at the Atlanta Compressor Station in Cass County, Texas and to change the location of the Vicksburg Compressor Station to a site in Hinds County, Mississippi, as more fully described in this order and the application.

(B) A certificate of public convenience and necessity is issued in Docket No. CP09-56-000 authorizing Midcontinent to construct and operate facilities for the Midcontinent Expansion Project in Lamar and Cass Counties, Texas, and Hinds County, Mississippi, as more fully described in this order and the application.

(C) The certificate authorization issued in Ordering Paragraphs (A) and (B) shall be conditioned on Midcontinent's:

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<sup>32</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(1) constructing and making available for service the facilities described herein and in the applications within eighteen months of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) 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 Commission's regulations; and

(3) compliance with the environmental conditions listed in the appendix to this order.

(D) Midcontinent's request for a determination that it is appropriate to roll in the costs of the Midcontinent Expansion Project is granted, based on the cost analysis discussed in the body of this order.

(E) Midcontinent's proposed change to its fuel procedures is rejected without prejudice to Midcontinent refiling the proposed change in a future NGA section 4 proceeding, as discussed in the body of this order.

(F) Midcontinent must file actual tariff sheets consistent with the pro forma tariff sheets filed in this proceeding not less than 30 days, and not more than 60 days, prior to the commencement of service on the proposed expansion facilities, as discussed in the body of this order.

(G) Midcontinent shall execute firm service agreements reflecting levels and terms of service equivalent to those represented in its precedent agreements prior to Midcontinent commencing construction of its proposals.

(H) Mr. Hanner's motion to intervene out of time in both proceedings is granted.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

### Appendix – Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. Midcontinent shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EA, unless modified by the Order. Midcontinent must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of 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 project construction and operation.
3. **Prior to any construction**, Midcontinent 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 location shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, Midcontinent shall file with the Secretary any

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

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

This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and prior to construction**, Midcontinent shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Midcontinent must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Midcontinent will implement the construction procedures and mitigation measures described in its application and supplements

- (including responses to staff data requests), identified in the EA, and required by the Order;
- b. how Midcontinent 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;
  - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Midcontinent will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Midcontinent's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Midcontinent will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Midcontinent shall file updated status reports with the Secretary on a monthly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Midcontinent's efforts to obtain the necessary federal authorizations;
  - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission

- and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Midcontinent from other federal, state, or local permitting agencies concerning instances of noncompliance, and Midcontinent's response.
8. Midcontinent must receive written authorization from the Director of OEP **before commencing service** for each phase of the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
  9. **Within 30 days of placing the Certificated facilities in service**, Midcontinent 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 Midcontinent has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
  10. Midcontinent shall file noise surveys with the Secretary for each respective station **no later than 60 days** after placing the authorized unit(s) at the Atlanta, Lamar, and Vicksburg Compressor Stations in service. If the noise attributable to the operation of a modified station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby noise-sensitive areas, Midcontinent shall install additional noise controls to meet that level **within 1 year** of the in-service date. Midcontinent shall confirm compliance with the  $L_{dn}$  of 55 dBA requirement for any such station(s) by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.