

146 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Northern Natural Gas Company

Docket No. CP13-528-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued March 20, 2014)

1. On August 1, 2013, Northern Natural Gas Company (Northern) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate its proposed West Leg 2014 Expansion Project (West Leg Project), located in Dakota and Dodge Counties, Nebraska, and Woodbury County, Iowa. The Commission grants the requested certificate authorization, subject to the conditions described herein.

2. Northern also requests approval of rolled-in rate treatment for the expansion costs. The Commission denies the request for a pre-determination in support of rolled-in rate treatment for the expansion for the reasons discussed below.

I. Background and Proposal

3. Northern is a natural gas company engaged in the transportation of natural gas in interstate commerce, subject to the Commission's jurisdiction. Northern operates facilities located in Delaware, Texas, New Mexico, Oklahoma, Kansas, Nebraska, Iowa, Minnesota, Illinois, Michigan, Wisconsin, North Dakota, South Dakota, and Louisiana.

¹ 15 U.S.C. § 717f(b) and 717f(c) (2012).

² 18 C.F.R. Pt. 157 (2013).

4. To meet the growth needs on the West Leg portion of its market area,³ Northern proposes to construct and operate new compression, pipeline, and meter station facilities. Northern states that the West Leg Project will provide for incremental winter peak-day firm service of 88,430 dekatherms (Dth) per day serving residential, commercial and industrial customers in its market area.
5. Northern proposes to construct the following facilities: (1) a 1.17 mile extension of its existing C-Line in Dakota County, Nebraska; (2) 5.52 miles of greenfield branch pipeline in Dakota County, Nebraska, and Woodbury County, Iowa; (3) 0.31 miles of greenfield tie-over branch line in Woodbury County, Iowa; (4) a 4,700 horsepower (hp) compressor station, the Fremont Compressor Station, in Dodge County, Nebraska; (5) a 9,480 hp compressor station, the Homer Compressor Station, located in Dakota County, Nebraska; and (6) a new meter station, the CF Industries Port Neal 2 Meter Station (CF Industries Meter Station), and appurtenant facilities located in Woodbury County, Iowa.
6. The 1.17 mile extension of Northern's existing C-Line involves two new 24-inch-diameter pipelines, running parallel to each other, within the same right of way (ROW), extending east to the proposed Homer Compressor Station.
7. The 5.52 mile, 20-inch-diameter, greenfield branch pipeline will begin at the discharge side of the proposed Homer Compressor Station extending east to the proposed CF Industries Meter Station.
8. The 0.31 mile, 20-inch-diameter, greenfield branch tie-over pipeline will connect the proposed CF Industries Meter Station to Northern's existing Terra Chemical Branch Line.
9. The Fremont Compressor Station will consist of a 4,700 hp gas turbine compressor unit and associated appurtenant facilities. The proposed station will connect to Northern's existing C-Line.
10. At the new Homer Compressor Station, Northern will install four reciprocating gas compressor units with a total rating of 9,480 hp, as well as associated appurtenant facilities.⁴ This compressor station will connect to the proposed C-Line extension and the new greenfield branch line.

³ The West Leg supplies eastern Nebraska, South Dakota, northwest Iowa and southwest Minnesota. *See* Northern's November 26, 2013 Data Response Request.

⁴ According to in the Interstate Natural Gas Association of America White Paper entitled "Waste Energy Opportunities for Interstate Natural Gas Pipelines"

(continued...)

11. Northern proposed to remove two short segments of its existing C-line pipeline to connect the proposed Fremont Compressor Station and the proposed C-line extension. Each segment is approximately 40 to 100 feet in length. A third segment of Northern's existing Terra Chemical Branch Line, approximately 14 feet, would also be removed to connect the proposed greenfield branch tie-over line.⁵

12. Northern states that from October 18, 2013, to November 7, 2013, it conducted an open season for its West Leg Project.⁶ Northern offered firm transportation service of up to 88,430 Dth per day under its existing Rate Schedule TFX. CF Industries Nitrogen, LLC (CF Industries) was awarded 88,000 Dth per day of the transportation service and Interstate Power and Light Company (IPLC) was awarded 430 Dth per day of the transportation service, accounting for the full amount of transportation service to be made available by the expansion. Both shippers have signed precedent agreements for firm transportation service under Rate Schedule TFX at negotiated rates for 10-year terms. Service is contemplated to begin on November 1, 2014, for a total of 5,430 Dth per day and increase to the project's full capacity of 88,430 Dth per day on December 1, 2015.⁷

13. Northern proposes to establish its existing applicable rates under Rate Schedule TFX as initial recourse rates for service provided by the expansion and requests a predetermination that it may roll the costs associated with the West Leg Project into its

(February 2008), there is potential for the recovery of waste heat energy at compressor stations with gas turbines over 15,000 hp and a 60 percent load factor. At Northern's proposed Homer Compressor Station, the total horsepower is below the threshold and the compressor units are reciprocating. At Northern's proposed Fremont Compressor Station, although the compressor unit is a turbine, the horsepower is well below the threshold. Thus, the proposed compressor stations are not viable candidates for waste heat recovery.

⁵ While Northern does not ask for authorization, pursuant to section 7(b) of the NGA, to abandon these three segments of pipeline, such abandonment authorization is required.

⁶ In conjunction with its open season, Northern also provided customers with currently effective firm transportation contracts with capacity on Northern's West Leg an opportunity to turn back capacity, but received no requests to do so.

⁷ Northern's Application at 3.

existing rates in a future rate case. Northern estimates that the West Leg Project will cost approximately \$75,755,229.⁸

II. Notice, Interventions and Protest

14. Notice of Northern's application was published in the *Federal Register* on August 21, 2013 (78 Fed. Reg. 51,716). Timely, unopposed motions to intervene were filed by Atmos Energy Corporation, Atmos Energy Marketing, LLC, CF Industries, Minnesota Energy Resources Corporation, Nicor Gas, and jointly by Northern States Power-Minnesota and Northern States Power-Wisconsin. The Midwest Region Gas Task Force Association⁹ and the Northern Municipal Distributors Group¹⁰ also jointly filed a motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹¹

⁸ The cost estimate includes the \$70,880,412 listed in Exhibit K, plus \$4,874,817 for associated automatic blanket and section 2.55(a) projects. See Northern's Application at Exhibit N, p. 3, n.2.

⁹ Midwest Region Gas Task Force is composed of the following municipal-distributor and local distribution customers of Northern Natural Gas Company: Austin; Centennial Utilities; Community Utility Company; City of Duluth, Minnesota-Duluth Public Utilities; Great Plains Natural Gas Company, a Division of MDU Resources Group Inc.; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehans Gas Company, Inc.; Two Harbors; Virginia; and Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

¹⁰ Northern Municipal Distributors Group is composed of the following Iowa municipal-distributor customers of Northern Natural Gas Company: Alton; Cascade; Cedar Falls; Coon Rapids; Emmetsburg; Everly; Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Orange City; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

¹¹ 18 C.F.R. § 385.214(c) (2013).

III. Discussion

15. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the abandonment, construction and operation of the facilities are subject to sections 7(b), (c), and (e) of the NGA and to the Commission's regulations.¹²

A. Certificate Policy Statement

16. The Commission's Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.¹³ The Certificate Policy Statement establishes 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 new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new natural gas facilities.

17. Under this policy, the threshold requirement for existing pipelines proposing construction projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse 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 proposed route or location of the new pipeline facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

¹² 15 U.S.C. § 717f (2012).

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

18. As indicated above, the threshold requirement under the Certificate Policy Statement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Northern proposes to charge its existing applicable rates under Rate Schedule TFX as the recourse rates for service on the West Leg Project. However, as discussed in the rate section below, these recourse rates will not fully recover the cost of service of the West Leg Project. Since the proposed initial rates are rates for new service, none of the costs of the proposed project are included in Northern's currently-effective rates. Therefore, we can accept Northern's proposal to charge its existing rates as initial recourse rates for service on the West Leg Project, as long as steps are taken to ensure that existing customers will not, in the future, be called upon to subsidize the costs of West Leg Project. Accordingly, in order to protect Northern's existing shippers from subsidizing the expansion project, as discussed below, the Commission is denying Northern's request for a predetermination that Northern may roll the cost of the expansion project into its system rates in a future rate case. In addition, as is also discussed below, we will require Northern to account for the construction and operating costs and revenues of the project separately. These steps will ensure that existing customers will not be at risk of subsidizing the project. Based on the above, we find use of Northern's existing Rate Schedule TFX rates as the initial recourse rates for project service satisfies the threshold requirement of the Certificate Policy Statement.

19. We find that the West Leg Project will not have adverse impacts on existing pipelines or their customers, since the project is designed to provide incremental service to two shippers. We also find the proposed facilities have been designed in a manner to minimize impacts on landowners and the environment. While construction and operation of the project facilities will require new ROW, Northern states that it selected the pipeline route and site locations to parallel the road ROW, where possible, and worked with stakeholders during the pre-filing process to select the proposed routes and sites, to minimize impacts on landowners and communities.¹⁴

20. Based on the above findings, the Commission concludes that the proposed project will provide benefits to the market without any identifiable adverse impacts on existing customers, other pipelines, landowners, or communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of Northern's proposal is required by the public convenience and necessity, subject to the conditions discussed below.

¹⁴ Northern's Application at 14.

B. Abandonment

21. Northern proposes to remove three short segments of pipeline. Since removal of these three segments is a necessary component of the proposed project in order to tie-in the new pipeline facilities, we find that abandonment is permitted by the public convenience or necessity and thus approve the removal of these three pipeline segments.

C. Rates**1. Initial Recourse Rates**

22. Northern proposes to use its currently-effective rates under its existing Rate Schedule TFX as the initial recourse rates for the West Leg Project, including all applicable charges and surcharges. Northern's current Rate Schedule TFX reservation rates (market-to-market) are \$5.683 per Dth for April through October and \$15.153 per Dth for November through March.¹⁵ While Northern states the West Leg Project shippers have contracted for negotiated rates, we will approve Northern's request to use its current Rate Schedule TFX rates as the initial recourse rates for the West Leg Project.

2. Rolled-in Rate Determination

23. Northern requests a predetermination that it will be appropriate to roll the costs associated with the proposed West Leg Project in to its system-wide rates in a future NGA section 4 rate case. Northern's two shippers, CF Industries and IPLC, have signed precedent agreements for firm market-to-market transportation service under Rate Schedule TFX at negotiated rates for 10-year terms. Using these negotiated rates, Northern shows that during the first three years of service the West Leg Project's projected cumulative annual revenues of \$52,245,000¹⁶ exceed its estimated cumulative annual cost of service of \$36,174,000 by approximately \$16,071,000.¹⁷ Northern shows that: (1) for the first year, when the proposed project is only partially completed and operational, Northern's projected incremental revenues based on negotiated rates are

¹⁵ Northern's November 26, 2013 Data Response Request at No. 2; and Northern's FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 51.

¹⁶ Northern's incremental revenues are based on the negotiated rates of: (1) \$18.240 for IPLC; and, (2) \$23.098 and \$17.018 for CF Industries. See Northern's November 26, 2013 Data Response at No. 2.

¹⁷ Northern's Application at Exhibit N.

\$7,605,000, which is \$4,889,000 less than the estimated cost of service of \$12,494,000¹⁸ and (2) the projected incremental revenues based on negotiated rates exceed the estimated cost of service in the second and third years, when the West Leg Project will be fully completed and operational, by \$8,109,000 and \$12,851,000, respectively.¹⁹

24. To receive authorization for rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future section 4 proceeding, we will compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).²⁰

25. When the maximum Rate Schedule TFX recourse rates of \$5.683 per Dth (for April through October) and \$15.153 per Dth (for November through March) are substituted for the higher negotiated rates that Northern uses in its calculation, the first year annual incremental revenues are \$2,669,523, \$9,824,477 less than Northern's estimated annual cost of service for the first year of \$12,494,000. For year 2, the annual cost of service is \$12,045,000, which exceeds incremental revenues of \$10,172,274 by \$1,872,726. For year 3, the annual cost of service is \$11,635,000, which exceeds incremental revenues of \$10,217,773 by \$1,417,267.²¹

26. In view of these considerations, we deny the request for a predetermination supporting rolled-in rate treatment for the West Leg Project's costs. This denial is

¹⁸ *Id.*

¹⁹ For year 2 and year 3 incremental revenues are \$20,154,000 and \$24,486,000, respectively, and the annual cost of service for years 2 and 3 are \$12,045,000 and \$11,635,000, respectively. *Id.*

²⁰ See *Tennessee Gas Pipeline Company, L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013). The Commission also compares costs and revenues on an annual basis, as opposed to the cumulative three-year comparison presented by Northern in its application.

²¹ See Northern's November 26, 2013 Response to Staff Data Request at No. 2.

without prejudice to Northern filing for and fully supporting rolled-in rate treatment for these facilities in a future rate case.

27. Consistent with the Certificate Policy Statement, Northern must account for the construction and operating costs and revenues of the project separately in accordance with section 154.309 of the Commission's regulations.²² The information must be provided consistent with Order No. 710.²³ The books should be maintained with applicable cross-references.²⁴ This information must be in sufficient detail so that the data can be identified in Statements G, I, J and other Statements contained in section 154.312 of the Commission's regulations.²⁵ Such measures will assist the Commission and parties to a future rate proceeding to determine the costs of the West Leg Project and enable them to evaluate whether the rates proposed satisfy the requirement that existing customers not subsidize the project.

3. Fuel Rate

28. Northern proposes to charge its existing system-wide fuel rate for transportation on the capacity associated with the West Leg Project facilities. Northern's market area fuel percentage should decrease as a result of the expansion.²⁶ Therefore, we grant Northern's request to charge West Leg Project shippers its existing fuel rate.

4. Negotiated Rate Agreements

29. Northern proposes to provide service to both its shippers under negotiated rate agreements. Northern must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the West Leg Project,

²² 18 C.F.R. § 154.309 (2013).

²³ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs., ¶ 31,267 (2008).

²⁴ 18 C.F.R. § 154.309 (2013).

²⁵ 18 C.F.R. § 154.312 (2013).

²⁶ See Northern's November 26, 2013 Data Response.

in accordance with the Alternative Rate Policy Statement²⁷ and the Commission's negotiated rate policies.²⁸ Northern must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

D. Environmental Analysis

30. Commission staff began its environmental review of the West Leg Project following approval for Northern to use the pre-filing process on December 7, 2012, in Docket No. PF13-2-000. As part of the pre-filing review, the Commission issued a *Notice of Intent To Prepare an Environmental Assessment for the Planned West Leg 2014 Expansion Project, Request For Comments On Environmental Issues, and Notice Of Onsite Environmental Review* (NOI) on January 18, 2013. The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

31. We received 10 comment letters in response to the NOI from the National Park Service, the Nebraska Department of Natural Resources (Nebraska DNR), the Nebraska Game and Parks Commission, the Papio-Missouri River Natural Resources District (NRD), and six landowners. The primary issues raised by the commentators were impacts on wildlife, a wetland reserve program easement, air quality, noise, visual aesthetics, and safety.

32. To satisfy the requirements of the National Environmental Policy Act (NEPA), Commission staff prepared an environmental assessment (EA) for Northern's proposal. The EA was prepared with the cooperation of the U.S. Army Corp of Engineers (Army Corps), Natural Resources Conservation Service (NRCS), Iowa Department of Natural Resources (Iowa DNR), Nebraska Game and Parks Commission, and Papio-Missouri River NRD. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation,

²⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

²⁸ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. The EA also addressed all substantive comments received in response to the NOI.

33. We note that during the scoping period, a comment was received from Mr. Kurt Hohenstein of Cottonwood Flats, Inc. objecting to Northern's originally proposed route due to the presence of an active raptor nest on his property. Prior to filing its application, Northern revised the pipeline route to avoid the raptor nest on the Hohenstein property. In addition, in response to stakeholder and landowner comments, Northern made two other revisions to the proposed West Leg Project route prior to the filing of its application. As discussed in section A.3 of the EA, Northern's revised pipeline route avoids the wetland reserve program easement along the west banks of the Missouri River.

34. Northern also revised the proposed location of the Homer Compressor Station during the pre-filing process to address the concerns of nearby landowners. In addition, Northern developed visual screening plans for both the Homer and Fremont Compressor Stations, which include installing a vegetative buffer of deciduous and evergreen trees, constructing the compressor station buildings to resemble agricultural buildings, and painting structures and fences to blend into the surrounding landscape.

35. The EA was issued for a 30-day comment period and placed into the public record on November 26, 2013. The EA was also mailed to all interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. Comments on the EA were received from the Nebraska DNR. In its comments on the EA, the Nebraska DNR repeats its scoping comments that Northern should obtain the appropriate hydrostatic testing permit; that there are four registered wells within the project area and special care should be taken to locate and avoid impacting groundwater wells within the project area; and that all development should comply with local floodplain regulations.

36. Section B.3.1 of the EA states that to avoid construction-related impacts on water wells located in or near construction work areas, including any previously unidentified wells, Northern would implement its Spill Prevention, Containment and Countermeasure Plan including installation of exclusion fencing around the wellheads in the construction corridor to prevent damage by construction equipment and vehicles; posting signs in proximity to a well to prohibit overnight parking of equipment; and placing a cap on the wellhead (if needed) to prevent deposition of sediment or debris into the well.

37. The EA further states that Northern would prohibit refueling activities and storage of hazardous liquids within a 200-foot-radius of all wells. The EA clarifies that in instances where equipment requires refueling within the 200-foot-radius of a well:

- (1) Northern's inspection staff would monitor the refueling activities and have spill

response equipment on site and readily available; (2) Northern would implement spill prevention measures such as secondary containment; (3) Northern would restore any damaged well to its former quality, to the extent practicable, or replace the well; and finally (4) Northern would provide water to the landowner if a well is adversely affected during construction.

38. The Nebraska DNR also states that a permit to transfer groundwater may be required from the Nebraska DNR and/or the Papio-Missouri NRD. The Nebraska DNR further states that the Papio-Missouri NRD should be contacted prior to construction to advise them of any planned groundwater use and to ensure compliance with any Papio-Missouri NRD permitting requirements.

39. Section A.8 of the EA states that Northern will obtain all necessary permits, licenses, clearances, and approvals related to construction and operation of the West Leg Project. Table 7 in the EA summarizes these permits and authorizations, including permits for appropriation of surface water and/or groundwater.

40. Sections A.7 and B.3.2 of the EA state that Northern received a floodplain development permit from Dakota County, Nebraska, to construct the Homer Compressor Station, and the compressor station would be constructed one foot above the Pigeon Creek Ditch (100-year) floodplain elevation. The EA also states that Northern would obtain a floodplain development permit from Woodbury County, Iowa, for the tie-over greenfield branch line.

41. The Nebraska DNR comments on section B.3.2 of the EA, which states that a floodplain permit is not required for the Fremont Compressor Station. However, the Nebraska DNR states that a floodplain permit is required for this compressor station. The Nebraska DNR also points out that this permit is not included in section A.8, table 7 of the EA. We clarify here that Northern would be responsible for obtaining all permits and approvals required for the project, whether or not they appear in this table, including any required floodplain permit for the Fremont Compressor Station.

42. Lastly, the Nebraska DNR states that if an inadvertent release of drilling fluid occurs during HDD operations, Northern should notify the Nebraska Department of Environmental Quality, Papio-Missouri NRD, and Nebraska DNR. Section B.3.2 of the EA states that Northern proposes to notify FERC, Army Corps, Iowa DNR, Nebraska DNR, and other relevant state and local agencies if a release occurs. This will include the Nebraska Department of Environmental Quality and Papio-Missouri NRD. In conclusion, we believe that Northern's proposed measures, as documented in the EA, will ensure that it complies with the Nebraska DNR recommendations.

43. On January 30, 2014, Northern filed with the Commission its final design of the Homer and Fremont Compressor Stations. Based on the final design, the stack

dimensions differ slightly from the initial design analyzed in the EA. Northern revised its original air quality model (AERMOD) to reflect these changes. The air quality impacts from both compressor stations are well below National Ambient Quality Standards and do not change the conclusions in the EA.

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

45. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁹

IV. Conclusion

46. For all the reasons discussed above, the Commission concludes that the West Leg Project is required by the public convenience and necessity and authorizes Northern to undertake construction and operation of the project facilities, subject to the discussion herein, environmental conditions set forth in the appendix, and the ordering paragraphs to this order.

47. At a hearing on March 20, 2014, the Commission, on its own motion, received and made a part of the record all evidence, including the application, and exhibits thereto, submitted in support of the authorization sought herein, upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern to construct and operate its West Leg Project, as described and conditioned herein, and as more fully described in the application.

²⁹See, 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).

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

- (1) Northern completing the authorized construction of the proposed facilities and making them available for service within two years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Northern complying 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.
- (3) Northern complying with the environmental conditions in the appendix to this order.
- (4) Northern executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to commencing construction.

(C) Permission and approval are granted to Northern to abandon facilities, through its removal of three segments of its existing pipeline, as more fully described in the application and in this order.

(D) Northern shall notify the Commission within 10 days of the effective date of the abandonment of the facilities referenced in Ordering Paragraph (C).

(E) Northern 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 Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) Northern's proposal to use its Rate Schedule TFX reservation rates as its initial recourse rates for the project are approved.

(G) Northern's request for a predetermination of rolled-in rate treatment is denied without prejudice to Northern's demonstrating, in a future NGA section 4 filing, that such rate treatment will not result in subsidization of the expansion capacity by existing shippers.

(H) Northern must file not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities, all negotiated rate agreements or a tariff record setting forth the essential terms of the agreements associated with this project.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions for the West Leg Project Docket No. CP13-528-000

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Northern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Northern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - 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**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Northern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Northern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or 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 our *Upland Erosion Control, Revegetation, and Maintenance Plan* or 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 before construction begins**, Northern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Northern must file revisions to the plan as schedules change. The plan shall identify:
- a. how Northern 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 Northern 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 EIs assigned, and how the Northern will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. Northern's personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. Northern's personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northern 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, Northern shall file updated status reports with the Secretary on a **biweekly 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 Northern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the 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 Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Northern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Northern must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Northern 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 Northern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction** of the Missouri River horizontal directional drill crossing, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, the final horizontal directional drill plan which defines the entry and exit points as well as the final temporary workspace for pipeline pullback area.
12. Northern shall make all reasonable efforts to ensure its predicted noise levels from the Fremont and Homer Compressor Stations are not exceeded at nearby noise sensitive areas, and file full power load noise surveys showing this with the Secretary **no later than 60 days** after placing the Fremont and Homer Compressor Stations in service. If full power load condition noise surveys are not possible, Northern shall file an interim surveys at the maximum possible power load **within 60 days** of placing the Fremont and Homer Compressor in service and file the full power load surveys **within 6 months**. If the noise attributable to the operation of all the equipment of the Fremont and Homer Compressor Stations at interim or full power load conditions exceeds 55 A-weighted day-night averaged decibels at any nearby noise sensitive areas, Northern shall install additional noise controls to meet the level **within 1 year** of the in-service date. Northern shall confirm compliance with this requirement by filing a second full power noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.