

151 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Paiute Pipeline Company

Docket No. CP14-509-000

ORDER ISSUING CERTIFICATE

(Issued May 14, 2015)

1. On June 27, 2014, Paiute Pipeline Company (Paiute) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity authorizing it to construct and operate approximately 35.2 miles of 8-inch diameter pipeline, modify its Elko City Gate in Nevada, construct and operate a new interconnection with Ruby Pipeline, LLC (Ruby), and construct and operate associated appurtenant facilities (Elko Area Expansion Project). The proposed Elko Area Expansion Project will enable Paiute to provide 21,994 dekatherms per day (Dth/day) of incremental firm transportation service to Southwest Gas Corporation-Northern Nevada (Southwest-NN) and Newmont Mining Corporation (Newmont).³

2. For the reasons discussed below, the Commission will authorize Paiute's proposal, subject to certain conditions.

I. Background and Proposal

3. Paiute is a natural gas company engaged in the transportation of natural gas in interstate commerce, subject to the Commission's NGA jurisdiction. Paiute is a wholly-owned subsidiary of Southwest Gas Corporation (Southwest Gas).

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. § 157 (2014).

³ Newmont Mining Corporation and Newmont USA Limited are used interchangeably in certain documents in this proceeding. Newmont USA Limited is a wholly-owned subsidiary of Newmont Mining Corporation.

4. Paiute's natural gas transmission system extends approximately 226 miles in a southerly direction from an interconnection with Northwest Pipeline, LLC (Northwest) at the Owyhee Receipt Point near the Idaho-Nevada border to Wadsworth Junction, Nevada, where Paiute's mainline splits into the Reno and Carson Laterals.⁴ These laterals extend to the California-Nevada border near the north and south ends of Lake Tahoe, where Paiute delivers gas to some of its customers, including Sierra Pacific Power Company d/b/a NV Energy (Sierra Pacific). Paiute's Elko Lateral, which begins at a point approximately 100 miles downstream of the Owyhee Receipt Point, extends in an easterly direction for approximately 147 miles to the existing Elko, Nevada City Gate.

5. Paiute proposes to construct and operate facilities in Elko County, Nevada, that are designed to provide 21,994 Dth/day of incremental firm transportation service. Specifically, Paiute proposes to:

- 1) construct and operate approximately 35.2 miles of 8-inch diameter pipeline extending from Ruby's existing Wieland Flat Compressor Station, located approximately 32 miles north of Elko City along Nevada Highway 225, to Paiute's existing 6-inch diameter Elko Lateral at its Elko City Gate;⁵
- 2) construct and operate a new interconnection with Ruby adjacent to the footprint of the Wieland Flat Compressor Station (the Jade Flats Meter Station or, alternatively, the Jade Flats Receipt Point);
- 3) construct and operate associated appurtenant facilities;⁶ and
- 4) modify Paiute's existing Elko City Gate to include two new dry gas filters, replacing or relocating existing station piping and components, relocating an existing supervisory and data acquisition (SCADA) building, and expanding an existing 8-foot high chain link fence.

The estimated cost of the Elko Area Expansion Project is approximately \$34,741,346.

⁴ Most of Paiute's market requirements are served downstream of Wadsworth Junction.

⁵ Paiute has an existing interconnection with Ruby at the Opal Valley Meter Station approximately 78 miles downstream of the Owyhee Receipt Point.

⁶ See Paiute Application at 11 for a description of the appurtenant facilities.

6. Paiute states that it conducted an open season from June 26 to July 17, 2013, for the Elko Area Expansion Project. In its open season notice, Paiute solicited, but did not receive, offers to turn back capacity for the proposed project. Paiute states that at the end of the open season, it received “a number of questions from shippers about the possibility of turn back and project design for delivery pressures.”

7. As a result of this additional interest, Paiute held a supplemental open season from August 14 to August 21, 2013, soliciting turn back capacity on its existing system. Specifically, the supplemental open season notice requested turn back capacity from shippers holding capacity from Paiute’s Owyhee Receipt Point with Northwest to delivery points on its Elko Lateral, as well as solicited additional bids for capacity either through available turnback capacity or to be constructed as part of the proposed project.

8. As a result of the two open seasons, Paiute states that it received bids for service from Southwest-NN⁷ and Newmont⁸ for 17,987 Dth/day, which was less than the minimum design capability of 21,994 Dth/day of service associated with the proposed expansion facilities.⁹ Paiute states that, on September 6, 2013, it posted the available 4,007 Dth/day of service on its website. Paiute states that Southwest-NN submitted the only bid and was awarded the 4,007 Dth/day of service capability.

9. As an additional result of the supplemental open season, Southwest-NN turned back 5,959 Dth/day of winter season service and 5,188 Dth/day of summer season service from Paiute’s existing Owyhee Receipt Point to various points along Paiute’s existing Elko Lateral. Paiute states that Newmont acquired 3,405 Dth/day and 2,964 Dth/day of winter and summer season service, respectively, of this turned back capacity.

10. Paiute’s open season, supplemental open season, and website capacity post resulted in 21,994 Dth/day of firm transportation service from the proposed Jade Flats Receipt Point to delivery points on the Elko Lateral and turn back capacity from the Owyhee Receipt Point to delivery points on the Elko Lateral as follows:

⁷ Southwest-NN is a local distribution company and a division of Southwest Gas, Paiute’s parent company.

⁸ Newmont explores for and develops copper and gold ores and is a shipper on Paiute.

⁹ Based on Southwest-NN’s and Newmont’s requests for service, Paiute states that it designed the Elko Area Expansion Project facilities to transport 21,994 Dth/day on a design winter day.

| <u>Shipper</u> | <u>Dth/day</u> | <u>Receipt Point</u> | <u>Season</u> |
|----------------|----------------|----------------------|---------------|
| Southwest-NN | 21,275 | Jade Flats | Winter |
| Southwest-NN | 21,275 | Jade Flats | Summer |
| Newmont | 719 | Jade Flats | Winter |
| Newmont | 719 | Jade Flats | Summer |
| Newmont | 3,405 | Owyhee | Winter |
| Newmont | 2,964 | Owyhee | Summer |

11. Paiute has executed precedent agreements with Southwest-NN and Newmont for service under Rate Schedule FT-1. The transportation service for Newmont, utilizing turn back capacity, will be for a primary term of 15 years at Paiute's existing system-wide rate. The transportation service for Southwest-NN will be for a primary term of 20 years at Paiute's proposed incremental expansion rate.

12. Paiute proposes incremental transportation rates for service performed on the Elko Area Expansion Project. Paiute proposes an incremental monthly reservation charge for Rate Schedule FT-1 firm service of \$24.3626 per Dth¹⁰ and a usage charge of \$0.0000 per Dth.¹¹ As there is no compression on the project, Paiute proposes a zero fuel retention charge. Paiute also proposes to apply a lost and unaccounted for gas retention charge for gas transported on the project.

13. Paiute also provides *pro forma* tariff language whereby Paiute proposes to prevent shippers from trading imbalances at delivery points which require fuel, with delivery points on the Elko Area Expansion Project which do not require fuel. Paiute states this proposal will prevent cross-subsidization from existing customers. To implement this proposal, Paiute proposes to create a separate Receiving Party status in Delivery Location 8 – Elko.¹²

II. Notice, Interventions, and Protests

14. Notice of Paiute's application was published in the *Federal Register* on July 21, 2014 (79 Fed. Reg. 42,307). Newmont, the Public Utilities Commission of Nevada, Southwest Gas, Sierra Pacific, and the Office of the Nevada Attorney General, Bureau of

¹⁰ This reservation charge was calculated in the following manner:
\$6,429,965/263,928 Dth (21,994 Dth/day x 12 months).

¹¹ The proposed incremental rate, as Paiute notes, is significantly higher than either its rates as they existed prior to September 1, 2014, or its rates proposed in Paiute's then ongoing rate case in Docket No. RP14-540.

¹² See proposed Sheet No. 147, Version 2.0.0, in Exhibit P of the Application.

Consumer Protection (Nevada Attorney General) filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.¹³

15. On August 13, 2014, Northern Nevada Industrial Gas Users (Northern Nevada) filed an untimely, unopposed motion to intervene. On November 24, 2014, Prospector Pipeline Company (Prospector) filed an untimely motion to intervene with comments, contending that as an owner and operator of part of the pipeline system proposed as an alternative to the Elko Area Expansion Project, it should be granted party status.¹⁴ Northern Nevada and Prospector have demonstrated an interest in this proceeding and have shown that their participation will not delay, disrupt, or unfairly prejudice any other parties to the proceeding. Accordingly, we will grant Northern Nevada's and Prospector's late motions to intervene.¹⁵

16. Nevada Attorney General and Sierra Pacific¹⁶ protested Paiute's application. On August 13, 2014, Paiute filed an answer to these protests. As noted above, Paiute filed an answer opposing Prospector's late motion to intervene and comments and Nevada Attorney General filed an answer supporting Prospector's late motion to intervene and comments. Prospector filed an answer to Paiute's answer, which was answered by Paiute.¹⁷ Paiute filed an answer to Nevada Attorney General's answer, which was answered by Nevada Attorney General.¹⁸ Although the Commission's Rules of Practice

¹³ 18 C.F.R. § 385.214(c) (2014).

¹⁴ Paiute filed an answer opposing Prospector's late intervention and comments. Nevada Attorney General filed an answer supporting Prospector's late intervention and comments.

¹⁵ *See* 18 C.F.R. § 385.214(d) (2014).

¹⁶ Sierra Pacific is a public utility serving retail and wholesale customers in northern Nevada and a firm transportation and storage customer of Paiute.

¹⁷ Prospector filed its answer on December 18, 2014, and Paiute filed its answer on January 2, 2015.

¹⁸ Paiute filed its answer on December 23, 2014, and Nevada Attorney General filed its answer on January 7, 2015.

and Procedure do not permit answers to protests or answers to answers,¹⁹ we find good cause to waive our rules and admit all the pleadings to ensure a more complete and accurate record in this proceeding.²⁰

17. Southwest Gas filed comments supporting the project, explaining that the project will help it meet forecasted future demand in the Elko District. Nevada Attorney General protests the project contending, among other things, that Paiute failed to sufficiently demonstrate a need for the project and both Nevada Attorney General and Sierra Pacific assert in their protests that existing shippers might be called on to subsidize the project by absorbing costs associated with unsubscribed turn back capacity. Nevada Attorney General also supports further investigation into Prospector's pipeline system as a viable alternative to the project. Additionally, Sierra Pacific claims that the potential subscription of turn back capacity raises reliability issues. The protests and comments are addressed below.

III. Discussion

18. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.²¹

A. The Certificate Policy Statement

19. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²² 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 major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by

¹⁹ 18 C.F.R. § 385.213(a)(2) (2014).

²⁰ See 18 C.F.R. § 385.101(e) (2014).

²¹ 15 U.S.C. §§ 717f(c) and 717f (e) (2012).

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

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 applicants proposing new projects is that the applicant 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, 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.

1. Subsidization

21. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers.

22. In their protests, Sierra Pacific and Nevada Attorney General note that Southwest-NN offered to relinquish 5,959 Dth/day of winter season service and 5,188 Dth/day of summer season service at the Owyhee Receipt Point for use on the Elko Area Expansion Project, yet Newmont contracted for only 3,405 Dth/day of winter service and 2,964 Dth/day of summer service, leaving 2,554 Dth/day of winter service and 2,224 Dth/day of summer service at the Owyhee Receipt Point unsubscribed. Sierra Pacific and Nevada Attorney General are concerned that if Paiute is unable to contract with replacement shippers for this capacity, Paiute might attempt to shift the costs of Southwest-NN's unsubscribed turn back capacity to other shippers on Paiute's system and, in so doing, Paiute's other shippers would be subsidizing the project.

23. In its answer to the protests, Paiute states, and Sierra Pacific acknowledges, that under the terms of its precedent agreement, Southwest-NN's offer to turn back capacity becomes null and void to the extent such capacity is unsold, and the responsibility for that capacity stays with Southwest-NN. Accordingly, the Paiute and Southwest-NN precedent agreement expressly protects existing shippers against the risk of unsubscribed turn back capacity.

24. Paiute proposes to establish incremental recourse rates under its existing Rate Schedule FT-1 for service on the Elko Area Expansion Project. As discussed in greater detail below, Paiute's proposed incremental rates are calculated to recover all

construction, installation, operation, and maintenance costs associated with the project. Thus, we find Paiute's existing customers will not subsidize the project.

2. Existing Customers and Other Pipelines and Their Customers

25. Sierra Pacific states that because nothing in the Paiute and Southwest-NN precedent agreement limits delivery to points on the Elko Lateral, Paiute's existing shippers with firm delivery points downstream of the Elko Lateral connection with the mainline could be negatively impacted, if Paiute contracts with replacement shippers for firm delivery downstream of the Elko Lateral.

26. Paiute explains that pursuant to tariff provisions applicable to primary and secondary delivery point changes,²³ it evaluates requests for delivery point changes to ensure operational reliability, thereby preventing a shipper's delivery point change from affecting the service reliability of the other firm shippers. Paiute adds that a change in ownership of the capacity right in the future, from either Newmont or Southwest-NN to a replacement shipper, will not bestow any new rights to delivery point flexibility that do not already exist today. A replacement shipper's request for a delivery change downstream of the Elko Lateral would be subject to Paiute's existing FERC tariff and its provisions addressing requested delivery point changes.

27. We are satisfied that Paiute's tariff provisions provide adequate assurances that Paiute's existing shippers are adequately protected from the reliability concerns raised by Sierra Pacific.

28. There is nothing in the record to suggest that Paiute's existing customers will experience any degradation in service. In fact, the Elko Area Expansion Project could provide system benefits for existing customers by providing a new receipt point to access supplies from Ruby. In the event that the Paiute mainline or other receipt points become unavailable, the new receipt point provides an alternate path for accessing gas supply. Finally, the Elko Area Expansion Project would provide additional opportunities for capacity release and interruptible transportation. Thus, we find the proposed project will have no adverse impacts on Paiute's existing customers.

29. The Elko Area Expansion Project will not adversely affect other pipelines in the area or their captive customers. The only existing pipeline in the Elko County market area is Ruby, which does not currently serve the Elko Lateral. Ruby and its shippers will benefit from Paiute's proposal as Paiute's shippers will need to transport gas on Ruby or acquire gas supplies from other Ruby shippers to transport gas on the Elko Area

²³ See Paiute's FERC Gas Tariff, General Terms and Conditions, §§ 4.3(c)(1) and (2), Sheet Nos. 110-111 (version 2.0.0).

Expansion Project. Consequently, we find that there will be no adverse impact on other pipelines or their captive customers.

3. Landowners and Communities

30. Paiute has routed the Elko Area Expansion Project to minimize potential impacts to landowners and communities. To the extent practical, the Elko Area Expansion Project rights-of-way follow Nevada Highway 225 and the Bureau of Land Management's (BLM) utility corridor, a 3-mile-wide corridor designated by BLM to minimize adverse environmental impacts and ensure that there is not a proliferation of multiple, separate rights-of-way across BLM land. Specifically, of the project's 35.2 miles of pipeline, 33.6 miles are within the BLM rights-of-way corridor, of which 12.3 miles is privately owned. In addition, approximately 19.8 miles of the 35.2 miles of the pipeline will be within or adjacent to existing rights-of-way (i.e., pipeline, highway, and utility rights-of-way). During construction of the project, Paiute will utilize land acquired adjacent to existing rights-of-way and previously disturbed utility and roadway corridor lands. Thus, we find that Paiute has designed the Elko Area Expansion Project to minimize adverse effects on landowners and nearby communities.

4. Project Need

31. Nevada Attorney General contends that Paiute fails to demonstrate a need or market for the project sufficient to justify the adverse impacts associated with the construction of approximately 13 miles of pipeline on private property and Southwest-NN's decision to swap out lower-cost system capacity for higher-cost Elko Area Expansion Project capacity. In this regard, Nevada Attorney General claims that Paiute's affiliation with Southwest-NN should be considered in evaluating the prudence of Southwest-NN's precedent agreement. Specifically, Nevada Attorney General notes that in the first open season, Southwest-NN bid on only 17,268 Dth/day of Elko Area Expansion Project service. Yet, after Paiute offered shippers the opportunity to turn back capacity, Southwest-NN did so and then contracted for the project's remaining unsubscribed capacity. Nevada Attorney General questions the prudence of Southwest-NN's decision to turn back system capacity at a monthly reservation charge of \$9.1951 per Dth in favor of incremental capacity on the Elko Area Expansion Project with a projected monthly reservation charge of \$24.3626 per Dth at the same delivery point.

32. Paiute claims that it has demonstrated a clear need for the project, as evidenced by its submission of executed, long-term precedent agreements for the project's full capacity. Moreover, Paiute argues that its affiliation with Southwest-NN makes no difference in assessing need for the project, because the Commission gives equal weight to contracts with affiliates and non-affiliates and does not look behind contracts to determine whether customer commitments represent genuine growth of market demand.

33. We do not evaluate shippers' business decisions to acquire capacity,²⁴ and will not do so here. Nevada Attorney General argues that as Southwest-NN's turned back capacity was in excess of the capacity that was resold, Paiute's costs recovered from the unsold turned back capacity will eventually be borne by other shippers on Paiute's system. Paiute claims that scenario will not happen because, under the terms of its precedent agreement, Southwest-NN's offer to turn back capacity becomes null and void to the extent such capacity is unsold, and the responsibility for that capacity stays with Southwest-NN. In the event Paiute seeks to recover costs from the unsold turn back capacity from other shippers, the issue would be best addressed in an NGA general section 4 rate case dealing with issues of the company's prudence in accepting such a turn back and allocation of cost responsibility.²⁵ Moreover, Nevada Attorney General's allegations of Southwest-NN's prudence in swapping out lower-cost system capacity for Elko Area Expansion Project capacity are matters for resolution before the Public Utilities Commission of Nevada (Nevada PUC). Southwest-NN's piecemeal decision to fully subscribe to the proposed project does not, on its face, suggest impropriety warranting the Commission to depart from accepting the Paiute and Southwest-NN precedent agreement as evidence of market need.

34. The proposed Elko Area Expansion Project will provide additional transportation service for growing markets in the Elko, Nevada area. Southwest-NN and Newmont have signed precedent agreements fully subscribing the service created by the project. Based on the benefits the project will provide and the minimal adverse effect on existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Paiute's proposal, as conditioned in this order.

²⁴ See, e.g., *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 34 (2006) (citing Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744; *NE Hub Partners, L.P.*, 90 FERC ¶ 61,142, at 61,451 (2000)).

²⁵ The Commission's standards for a prudence review are discussed at *National Fuel Gas Supply Corp.*, Opinion No. 315, 44 FERC ¶ 61,293, at 62,055 (1988) (quoting *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,084 (1985), *aff'd*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,070 (1988), *reh'g denied*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988)).

B. Rates

1. Proposed Cost of Service

35. Paiute projects a first year cost of service of \$6,429,965.²⁶ To calculate this estimated cost of service, Paiute used the depreciation rates and pre-tax return approved in its last settlement underlying its currently effective rates.²⁷ Paiute states that it based its estimated Administrative, General, and Operations and Maintenance expenses on twelve months of data ending April 30, 2014, and property taxes as proposed in Paiute's then ongoing general rate case in Docket No. RP14-540.²⁸ We will approve Paiute's proposed costs of service, except for the following items.

36. Paiute proposes to allocate \$689,061 of Southwest-NN's overhead to the Elko Area Expansion Project, labeling these costs as "Administrative and General Expenses."²⁹ This figure is based on Southwest-NN's Administrative and General Expenses (A&G) for the twelve months ending April 30, 2014, and then escalated through October 31, 2016, using inflation factors (GDP Implicit Price Deflators) obtained from Blue Chip Economic Indicators.

37. Paiute utilizes the Massachusetts Formula to perform the initial allocation of Southwest-NN's A&G costs.³⁰ However, Paiute does not identify any new overhead costs that will be incurred by Southwest-NN attributable to the incremental Elko Area Expansion Project. Overhead costs are normally recovered through base rates. As there are no supported additional corporate overhead costs, Paiute will recover its allocable

²⁶ As itemized in Paiute's application at Exhibit N, the cost of service has several components.

²⁷ *Paiute Pipeline Co.*, 130 FERC ¶ 61,245 (2010).

²⁸ *Paiute Pipeline Co.*, 146 FERC ¶ 61,239 (2014). The Commission accepted and suspended Paiute's proposed rate increase, to be effective September 1, 2014, and subject to the outcome of a hearing. The Commission approved a settlement of this proceeding on February 6, 2015. *See Paiute Pipeline Co.*, 150 FERC ¶ 61,078 (2015).

²⁹ Paiute Application at Exhibit N at 8.

³⁰ The Massachusetts Formula is used to allocate overhead costs (expenses that are incurred by, and charged from, parent companies and/or service companies to subsidiaries and affiliates) among corporate subsidiaries when the costs cannot be directly allocated to specific subsidiaries. *See Distrigas of Massachusetts Corp.*, Opinion No. 291, 41 FERC ¶ 61,205, at 61,555-57 (1987).

share of overhead costs through its existing base rates. Permitting these costs to be recovered in the Elko Area Expansion Project rates could result in their double recovery. Thus, Paiute's proposed incremental corporate overhead costs of \$689,061 are rejected.³¹

38. Paiute states that it used a GDP Implicit Price Deflator of 0.7 percent for the year 2014, 1.9 percent for 2015, and 2.0 percent for 2016 (for a total of approximately 4.6 percent), to increase its cost estimates for allocated Southwest Gas's A&G costs,³² incremental Operations and Maintenance (O&M) costs,³³ and property taxes.³⁴ Paiute states that while it expects the project to go into service November 1, 2015, it proposes to reflect end of October 31, 2016 year costs in its rates. We reject Paiute's proposal to increase these estimated costs for inflation as unsupported.

39. Initial rate cost projections can be made many different ways, but they must be reasonable. Paiute, however, does not make any attempt to identify the source of its GDP Implicit Price Deflators, nor does it demonstrate that its proposed inflation adjustment has any relevance or historic comparability to Paiute's existing costs.³⁵ In the alternative, Paiute could have used the known and measurable standard in Part 154 of the regulations, which requires that to be recoverable, costs must be known and measurable with reasonable accuracy at the time of the filing to become effective within the adjustment period.³⁶ Paiute did not provide such a cost item by cost item analysis. Traditionally,

³¹ See, in accord, *Paiute Pipeline Co.*, 72 FERC ¶ 61,193, at 61,917 (1995); *ANR Pipeline Co.*, 143 FERC ¶ 61,225, at PP 39-40 (2013).

³² Paiute Application at Exhibit N at 8. The difference attributable to the inflation adjustment between October 2016 dollars (\$689,061) and April 2014 dollars (\$658,994) is \$30,067.

³³ Paiute Application at Exhibit N at 7. The difference attributable to the inflation adjustment between October 2016 dollars (\$156,536) and April 2014 dollars (\$149,706) is \$6,830.

³⁴ Paiute Application at Exhibit N at 10. The difference attributable to the inflation adjustment between October 2016 dollars (\$535,204) and initial dollars (\$511,851) is \$23,353.

³⁵ *Kern River Gas Transmission Co.*, Opinion No. 486-A, 123 FERC ¶ 61,056, at P 119 (2008).

³⁶ 18 C.F.R. § 154.303(4) (2014).

under Part 154 rate proceedings, costs based on projected future inflation rates are contrary to the Commission's policy.³⁷

40. Further, Paiute's inflation adjustment methodology uses end of year costs to establish the annual cost of service to be recovered for services that will start at the first of the year. Paiute's methodology assumes that the full annual inflation increase becomes effective on the first day of the annual period. This assumption is unreasonable, as the annual inflation adjustment recognizes the cumulative effects of inflation over the course of the full year. As such, costs at the beginning of the year are not the same as costs at the end of the year. Recognizing costs that have not yet inflated within the year would result in Paiute over-recovering its cost of service. This proposed methodology is unreasonable and is rejected. We will require Paiute to remove its inflation adjustment from O&M expenses and property taxes.³⁸

2. Proposed Initial Rates

41. Paiute proposes to recover the Elko Area Expansion Project's incremental cost of service through incremental firm rates calculated using the Straight Fixed-Variable cost classification methodology, plus a lost and unaccounted for gas retention charge, and other applicable system-wide surcharges. We will approve Paiute's proposed firm rate design and lost and unaccounted for gas retention charge methodologies.

42. Paiute states that the Elko Area Expansion Project will provide additional opportunities for capacity release and interruptible transportation. However, Paiute does not propose an interruptible transportation rate on the project. For a new interruptible

³⁷ *Kern River Gas Transmission Co.*, Opinion No. 486, 117 FERC ¶ 61,077, at P 98 n.167 (2008) (citing *ANR Pipeline Co.*, 69 FERC ¶ 61,432, at 62,542 (1994)); *Panhandle Eastern Pipe Line Co.*, 68 FERC ¶ 63,008, at 65,094 (1994) (rejecting inflation adjustment to O&M expenses); *Columbia Gulf Transmission Co.*, 67 FERC ¶ 61,242, at 61,802 (1994) (rejecting Columbia's proposed inflation allowance as against Commission policy and comparing it to a prohibited tracker that allows a pipeline to change its rates without filing a section 4 rate case); *Williston Basin Interstate Pipeline Co.*, 56 FERC ¶ 61,104, at 61,371 (1991) (rejecting inflation factor applied to increase insurance expenses).

³⁸ *Empire State Pipeline*, 116 FERC ¶ 61,074, at PP 77-78 (2006), *reh'g denied*, 117 FERC ¶ 61,319, at PP 174-181 (2006). Because we rejected Paiute's allocated overhead A&G costs for other reasons, this finding regarding Paiute's inflation adjustment is moot for these A&G costs.

service, Paiute is required to provide an interruptible transportation charge calculated on a 100 percent load factor of the firm transportation rate.

43. Our cost of service findings above will require Paiute to recalculate its initial rates. We will require Paiute to file actual tariff records not less than 30 days, or more than 60 days, prior to the in-service date of the Elko Area Expansion Project. That filing must be made consistent with Part 154 of the Commission's regulations, including work papers in spreadsheet format with formulas that show the removals, as detailed above.

44. To ensure that costs are properly allocated between Paiute's existing shippers and the incremental services proposed in this proceeding, we will require Paiute to keep separate books and accounting of costs attributable to the proposed incremental services. Further, the books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710 on incremental facilities.³⁹ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.⁴⁰

3. Imbalance Trading

45. Paiute proposes tariff changes to its existing imbalance trading procedures, preventing shippers from trading imbalances at delivery points which require fuel with delivery points on the Elko Area Expansion Project which do not require fuel. Paiute states that the reason for this proposal is to prevent cross-subsidization from existing customers. To implement this proposal, Paiute proposes to create a separate Receiving Party status in Delivery Location 8 – Elko.⁴¹

46. Our regulations state that “[a] pipeline must establish provisions permitting shippers and their agents to offset imbalances accruing on different contracts held by the shipper with the pipeline and to trade imbalances with other shippers where such

³⁹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

⁴⁰ 18 C.F.R. § 154.309 (2014).

⁴¹ See Application at Exhibit P, proposed Sheet No. 147, Version 2.0.0.

imbalances have similar operational impact on the pipeline's system.”⁴² Further, we have stated “[w]hether imbalance trading should be permitted across rate zones depends on the operational characteristics of the pipeline.”⁴³ We have recognized that when imbalance trades within an Operational Impact Area (OIA) cross rate zones a transportation service can be said to take place.⁴⁴ Charging for imbalances traded across rate zones may be appropriate and will ensure that shippers will not incur imbalances to try to game the system to save transportation costs.⁴⁵ If imbalance volumes can be traded across rate zones, then all rate zones constitute a single OIA since an OIA is an area in which imbalances have the same effects on the system.

47. We reject Paiute’s proposal to prohibit shippers from imbalance trading between its existing system and the Elko Area Expansion Project. This proposal is inconsistent with our regulations and policy, as described above. Paiute has a legitimate concern as to cross-subsidization. However, the solution is not to prohibit imbalance trading. Rather, Paiute should consider the appropriate rate to apply to imbalance trades that occur between its existing system and the Elko Area Expansion Project. As we explained in *Transco*, when imbalance trades involve the sale of natural gas at locations and when shippers with an imbalance in one zone trade with shippers with imbalances in other zones, the pipeline can “recover revenue equal to the transportation charge for delivering that gas.”⁴⁶

48. If Paiute were to propose a rate applicable to imbalance trades that occur between the two parts of its system, it cannot make that proposal in the instant NGA section 7 certificate proceeding. Such a rate would be applicable to all of Paiute’s transportation services and customers, not just those that are the subject of the proposed project. Such a rate proposal would have to be made pursuant to an NGA section 4 tariff filing.

⁴² 18 C.F.R. § 284.12(b)(2)(ii) (2014).

⁴³ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,678 (1998).

⁴⁴ *Transcontinental Gas Pipeline Corp.*, 98 FERC ¶ 61,213, at 61,818-820 (2002) (*Transco*).

⁴⁵ *Tennessee Gas Pipe Line Co.*, 99 FERC ¶ 61,017 (2002).

⁴⁶ *Transco*, 98 FERC ¶ 61,213 at 61,819.

C. Requests for an Evidentiary Hearing or Technical Conference

49. Sierra Pacific requests an evidentiary hearing or technical conference to resolve issues related to the potential subsidization of the project by existing shippers and the project's potential adverse impact on the quantity of service provided to existing shippers. Nevada Attorney General requests a technical conference to investigate the market need for the project.

50. An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.⁴⁷ Neither Sierra Pacific nor Nevada Attorney General has raised a material issue that we cannot resolve on the basis of the written record. As demonstrated above, the existing written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. We have satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submissions in written form.⁴⁸ Likewise, a technical conference would not add to our understanding of the issues raised in this proceeding; the pleadings before us contain a thorough discussion of the issues. Accordingly, we will deny Sierra Pacific's request for an evidentiary hearing or technical conference and Nevada Attorney General's request for a technical conference.

D. Environmental Review

1. Pre-Filing Review

51. On October 31, 2013, in Docket No. PF14-4-000, Commission staff began its environmental review of the Elko Area Expansion Project, following approval for Paiute to use the pre-filing process. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). On December 23, 2013, the NOI was published for a 30 day comment period and 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.⁴⁹ We received seven comments in response to the NOI. The commenters included two federal agencies, four state agencies, and one affected landowner.

⁴⁷ *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012); *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988).

⁴⁸ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

⁴⁹ The NOI was published in the *Federal Register* on December 31, 2013 (78 Fed. Reg. 79,688).

52. Federal agencies that provided comments included the U.S. Environmental Protection Agency (EPA) Region 9 and the U.S. Fish and Wildlife Service (FWS) Region 8. EPA provided recommendations for topics and subject matter that should be included in the environmental assessment (EA), requested that the EA address federal, state, tribal, and local land use plans and policies in the project area, and that Native American sacred sites, as defined by Executive Order 13007, in the project area be distinguished from historic properties under section 106 of the National Historic Preservation Act. EPA also requested that the EA describe how Paiute would avoid adversely affecting the integrity and accessibility of sacred sites. FWS provided recommendations regarding the greater sage-grouse habitat, the Migratory Bird Treaty Act, and permits concerning wetlands/waters of the United States.

53. State agencies that provided comments included the Nevada State Historic Preservation Office, Nevada Department of Transportation, Nevada Division of State Lands, and the Nevada Department of Environmental Protection (NDEP) – Bureau of Water Pollution Control. These state agencies provided comments regarding the section 106 consultation process, stormwater drainage, noxious weeds, the need for a traffic impact analysis, use of haul roads, visual impacts and lighting, and NDEP – Bureau of Water Pollution Control permitting.

54. The landowner's comments related to the proximity of the project to residences, and potential impacts on creek crossings, irrigation withdrawals, noxious weeds, and grazing rights.

2. Environmental Assessment

55. To satisfy the requirements of the National Environmental Policy Act (NEPA), our staff prepared an EA for Paiute's proposal. The EA was prepared with the cooperation of the U.S. Army Corps of Engineers, Sacramento District, Reno Office and the BLM Elko District Tuscarora Field Office. The analysis in the EA addresses geology; soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, special interest areas, and visual resources; cultural resources; air quality and noise; reliability and safety; traffic; environmental justice; cumulative impacts; and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

56. On January 27, 2015, the EA was issued for a 30-day comment period,⁵⁰ mailed to the environmental mailing list, and placed into the public record for the proceeding. The Commission received comments on the EA from Paiute, BLM's Tuscarora Field Office,

⁵⁰ The Notice of Availability of the EA was issued in the *Federal Register* on February 3, 2015 (80 Fed. Reg. 5743).

Nevada Attorney General, and Prospector. Paiute also filed an answer to the comments on the EA.

57. We received comments on the EA that addressed the project's description and proposed facilities, geology, vegetation, wildlife, visual impacts on the California National Historic Trail, cultural resources, Native American concerns (including environmental justice), safety, cumulative impacts, and alternatives. Substantive comments on the EA are addressed below and organized by general topic.

58. Paiute provided updates to some of the facility descriptions used in the EA. Though the updated language does not change the findings in the EA, we acknowledge the following clarifications and additional analysis as applicable.

- The SCADA building at the Elko City Gate will be replaced and moved within Paiute's existing right-of-way on BLM land and no modification to the BLM right-of-way grant is needed. The EA also acknowledges that permanent use rights-of-way for the Elko City Gate modification and expansion will likely fall under Paiute's existing BLM grant number NFN-055315.⁵¹ The permanent use area for the Elko City Gate interconnection will be expanded by only a 85-foot-long by 50-foot-wide area instead of a 168-foot-long by 50-foot-wide area, as indicated in the EA.
- Paiute will reduce the natural gas pressure to 400 pounds per square inch gauge (psig) for deliveries to Southwest-NN, not 200 psig as indicated in the EA.
- Paiute will use commercially-available power from a public power line at the proposed isolation valve at milepost (MP) 10.4 instead of constructing the previously proposed regulator station and thermoelectric generator, which contains an internal open flame. The power company will need to install 130 feet of overhead powerline to Paiute's valve site for the communications building and rectifier. All power-related ground disturbance by Paiute will occur within its easements. The power company will obtain its own BLM easement between its existing and proposed power poles. Paiute also proposes to install two buried 200-foot-deep vertical anode beds instead of one 300-foot-deep anode bed within its permanent easement.

⁵¹ See EA at A-13.

- Paiute will install the second isolation valve aboveground at MP 28.4, as opposed to the valve being buried and only the wheel-operated actuator and a blowdown assembly being aboveground. Since other components were already identified as being aboveground at this location, the addition of the valve aboveground does not change the conclusion in the EA regarding visual resources, which is that the facilities do not represent a significant impact. As indicated in the EA, Paiute will paint the valves an earth tone or other BLM-approved color to be consistent with the environment and other development in the area.⁵²
- The expanded approach road adjacent to State Highway 225 near the interconnection with Ruby will be covered in gravel, not paved. Paiute will maintain the new extension road, but will not maintain existing roads that were constructed by other parties.
- Paiute will not inspect the new line using in-line inspection tools prior to commissioning. Rather, Paiute will use hydrostatic test methods (a Hydrostatic Test Plan was filed on June 27, 2014). Additionally, Paiute will perform 100 percent non-destructive weld testing to determine the integrity of the pipeline welds. Paiute will perform periodic in-line testing after commissioning of the pipeline to allow the gas flow to move the in-line inspection tool at a consistent and desired speed.
- Paiute will not patrol the pipeline by air, but will instead use land-based vehicles.
- On the condition of receiving an exemption from the Nevada Department of Transportation, pipeline casing will not be utilized when boring under roads. Rather, the pipe will have abrasion resistant overcoating or a similar coating made specifically for boring.

59. In addition, BLM indicates in its comments that construction materials should not be left on site and that Paiute will be required to fund monitors to report to BLM during construction of the project. We acknowledge these additional stipulations here and note they may be imposed by BLM through its right-of-way grant. We also note that our *Upland Erosion Control, Revegetation, and Maintenance Plan* requires Paiute to remove construction debris from all construction work areas unless the landowner or land management agency approves leaving materials onsite for beneficial reuse, stabilization, or habitat restoration.

⁵² See EA at B-56.

a. **Geology**

60. BLM expresses concern about the Adobe Creek Fault, which is located in the project area. BLM states that the Adobe Creek Fault is “trending along the road.” We acknowledge that mapped segments of the Adobe Creek Fault trend in a northeast-southwest direction along the project alignment. However, as discussed in the EA,⁵³ no faults cross the pipeline alignment, and no faults identified along the alignment have experienced movement during the Holocene Epoch (11,700 years). Additionally, the EA includes an analysis of the seismic risk in the project area, including from the Adobe Creek Fault.⁵⁴ As indicated in the EA, modern electric arc-welded gas pipelines perform well in seismically active areas of the United States. Specific site conditions, including earthquakes, are considered in the design of the pipeline. The EA concludes that the design and construction of all project facilities must be in accordance with all applicable federal, state, and county building and construction ordinances to adequately minimize the potential effects of seismicity on the project.

b. **Vegetation**

61. BLM provides several comments related to data collection and treatment for invasive species. The comments are specific to Paiute’s Noxious and Invasive Weed Control Plan, which was included as Appendix Q of Paiute’s application. The plan itself was referenced in the EA but not included as part of the EA. BLM’s suggested additional requirements or stipulations, including coordination with BLM’s Elko District weed specialist, should be addressed directly with Paiute and included as additional stipulations imposed by BLM through its right-of-way grant.

62. BLM also comments that the quarterly vegetation monitoring reports be sent to BLM as well as the Commission. We agree and note that this may also be made a stipulation of BLM’s right-of-way grant to Paiute.

⁵³ See EA at B-6.

⁵⁴ See EA at B-6 to B-8.

c. **Wildlife**

63. BLM provides comments on migratory birds, big game, raptors, pygmy rabbits, and sage-grouse. The EA acknowledges Paiute's proposal to implement 300-foot buffers for all migratory bird nests and notes that, while the proposal is commendable, we will only require this for birds of conservation concern. BLM misunderstands the purpose of this statement in the EA, which is to remove this applicant-proposed mitigation measure from the requirements of this order (see Environmental Condition 1, requiring Paiute to construct the project as described in its application and in the EA), due to the EA's conclusion that the measure may result in an unbuildable project. However, Paiute is not prohibited from implementing this measure voluntarily. Due to the remainder of Paiute's construction and mitigation measures, the EA concludes that the effects of the project on migratory birds would not be significant. Further, we acknowledge that BLM has discretion to require Paiute to implement additional buffers, and specific timing for shrub removal, for all migratory birds on BLM lands, should it deem such measures necessary.

64. BLM asks that the big game areas depicted in a map in the EA be verified; specifically, that the black bear range be removed and pronghorn added. Since the information for the referenced map was obtained directly from the Nevada Department of Wildlife, there is no reason or basis for further verification. It should also be noted that the EA acknowledges that pronghorn can occur along the entire length of the proposed project.⁵⁵

65. BLM indicates that additional active raptor nests, although not identified in previous surveys, could be located in the project area and that additional information and measures not identified in the Wildlife Plan (included as an appendix to the EA) may be required for sage-grouse and pygmy rabbits. In accordance with Paiute's Wildlife Plan, preconstruction biological surveys and marking will be conducted for the project for migratory birds, greater sage-grouse, burrowing owl, and pygmy rabbits. Environmental Condition 13 of this order requires that the results of these preconstruction surveys be provided to the Commission prior to construction and that Paiute shall include any BLM comments on these surveys, as well as any additional proposed mitigation measures. In addition, relative to sage-grouse, the EA describes Paiute's commitment to continue to coordinate with BLM to ensure that all restoration and revegetation activities conform to the integrated vegetation management strategies outlined in the BLM's Instruction Memorandum No. 2013-043, *Greater Sage-Grouse Interim Management Policies*, and are included in the project-specific Wildlife Plan. Thus, Paiute should coordinate with BLM regarding any additional comments so that they can be incorporated into the final project-specific Wildlife Plan. As required by Environmental Condition 13, the final

⁵⁵ See EA at B-27.

Wildlife Plan must be filed with the Commission for review and approval, prior to construction.

66. BLM comments that the special status species list should include species from the 2011 BLM Sensitive Species List. However, the comment refers to “page 197 and table 1.” There are no such page or table numbers in the EA so we are unsure of what this comment is specifically referring to. We note that the EA does include and address BLM sensitive species with the potential to occur in the project area.⁵⁶

67. BLM indicates that wildlife ramps should be placed every 1,200 feet in open trenches. Furthermore, BLM comments that a grazing allotment permittee requests that reconstructed fencing not have a smooth bottom wire and that the fence wire is “similar” to current specifications to ensure that livestock do not easily get under the fence. As indicated in our *Upland Erosion Control, Revegetation, and Maintenance Plan*, Paiute is required to develop project-specific procedures in coordination with the appropriate agencies (in this case, BLM) and landowners to allow for livestock and wildlife movement and protection during construction. Thus, specifications from BLM or allotment permittees should be coordinated with Paiute and incorporated as stipulations of BLM’s right-of-way grant.

d. Visual Impacts on the California National Historic Trail

68. BLM questions whether mitigation is needed for visual impacts on the California National Historic Trail (California Trail). The California Trail passes near the southern end of the project where the proposed pipeline interconnects with the Elko Lateral at the Elko City Gate. As indicated in the EA, two key observation points along the route of the California Trail were chosen to assess the potential impact on the visual character of the historic setting of the California Trail.⁵⁷ The existing facility is not visible from the first point. From the second point, a portion of the Elko City Gate facility is visible. However, Interstate-80 is located between the California Trail and the facility, and has a greater visual impact. The EA concludes that the minor modifications to the Elko City Gate facility will not be noticeable from the California Trail and that there will not be an adverse effect on the California Trail. We agree.

e. Cultural Resources

69. BLM comments that the results of a cultural resources addendum survey were not included in the EA. The results of the addendum report were not included in the EA because the report was provided late in the review process. The additional survey

⁵⁶ See EA at B-35 to B-43.

⁵⁷ See EA at B-57.

identified three new sites, which were recommended not eligible for listing on the National Register of Historic Places. We have not received comments on the report from BLM or the Nevada State Historic Preservation Office (Nevada SHPO). BLM objects to the project moving forward if compliance with section 106 of the National Historic Preservation Act (NHPA) is not complete. Environmental Condition 15 ensures that construction cannot commence until compliance with section 106 of the NHPA is complete.

70. BLM also questions the conclusion that the project would have no effect on historic properties, since there is a ranch complex that was not evaluated. We clarify that project impacts on the subject ranch property are limited to the temporary use of an existing access road, which will not change any characteristics of the property, regardless of whether or not the property is historic. Additionally, BLM did not disagree with the recommendation in the cultural resource survey report that the project would have no effect on the ranch complex. BLM's comment letter to the Nevada SHPO, which was provided to the Commission on November 14, 2014, indicates that BLM agreed that the project would have no effect on historic properties if site 26EK14693 is avoided. Site 26EK14693 is not associated with the ranch complex. To ensure BLM's comments are addressed, Environmental Condition 15 requires Paiute to file an avoidance or treatment plan for site 26EK14693, including BLM's and the Nevada SHPO's comments on any plans, for Commission staff review and approval prior to construction.

f. Native American Concerns

71. BLM states that the EA is incorrect in recommending that Paiute file a revised Unanticipated Discovery Plan to address tribal monitors because a revised plan has already addressed this need. We agree and clarify that Paiute filed a revised plan on November 20, 2014, which addresses the need for tribal monitors. Thus, the recommendation in the EA to file a revised Unanticipated Discovery Plan (recommended Environmental Condition 14) is not included as an environmental condition in this order.

72. BLM notes that the names of several Indian tribes were incorrect in the EA. For clarification, we note that BLM identifies the following Indian tribes that comprise the Te-Moak Tribe of Western Shoshone Indians of Nevada: Battle Mountain Band Colony, Elko Band Colony, South Fork Reservation, and Wells Band Colony.

73. BLM requests additional information regarding a tribal request to reroute the pipeline around any burials identified during construction. The Unanticipated Discovery Plan identifies the specific measures Paiute will implement should previously unidentified cultural resources be discovered during construction. Furthermore, Environmental Condition 2 of this order allows the Commission to ensure the protection of sensitive resources.

74. BLM also indicates that the EA did not address a previous comment provided on environmental justice regarding the effect of the project on Indian tribes in the area. We disagree. The comment from the BLM was addressed in the EA.⁵⁸

g. Safety

75. Paiute clarifies that Nevada does not have delegated authority from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) to inspect new interstate natural gas pipeline facilities. Thus, the project will not be required to obtain a Nevada Utility Environmental Protection Act Permit to Construct. Paiute's pipeline facilities will be regulated by PHMSA, including inspections by the U.S. Department of Transportation. This clarification is noted and does not affect the findings of the safety analysis in the EA.

h. Cumulative Impacts

76. BLM identifies four new or additional projects within the cumulative effects study area that should be considered in the cumulative impacts assessment for the project.

77. As part of the 2015 National Defense Authorization Act, Congress conveyed about 275 acres of BLM-managed lands to Elko County. The land is to be used as a motocross, bicycle, off-highway vehicle, or stock car racing area and will be located between MPs 34 and 35 of the proposed pipeline route. Also as part of this act, Congress approved about 373 acres of land to be held in trust for the Te-Moak Tribe of Western Shoshone Indians of Nevada. The land is to be used for traditional and customary uses, stewardship conservation for the benefit of the tribe, or residential or recreational development.

78. In addition, an access road, water utilities, and water storage tank are planned for about 45 acres of land east of the Elko City Gate at MP 35.2 (BLM refers to this as the Cattle Drive Project).⁵⁹ BLM's EA for this project is pending. A new 0.9 acre access road (Eldridge Road) is also proposed in the area. BLM is determining whether previously prepared NEPA documents provide adequate coverage for this project.

79. These additional projects, when added to the other existing and planned projects identified in the EA⁶⁰ could have cumulative impacts on certain resources. However, most of the impacts associated with the proposed project will be temporary or short term,

⁵⁸ See EA at B-77; see also EA at B-58 to B-59.

⁵⁹ Section 18 of Township 34 N, Range 55E.

⁶⁰ See EA at B-78 to B-86.

as they will occur only during construction. The exact timing of the implementation of these additional projects is unknown, but they will likely not all occur at the same time, thereby minimizing or avoiding cumulative impacts during construction of the proposed project. If the additional projects were to occur during the same timeframe, implementation of required erosion control measures, Stormwater Pollution Prevention Plans, spill prevention and clean-up plans, and other best management practices required by applicable federal, state, and/or local agencies, would minimize impacts on soils, groundwater, surface waters, and wetlands. Any of these projects that are federally regulated, like the proposed project, are subject to specific consultation with the FWS, to ensure impacts on federally listed species are minimized, and consultation with the Nevada SHPO/BLM, to avoid or minimize impacts on cultural resources.

80. Based on the short duration of construction activities, and Commission staff's review of the estimated emissions from project construction, the EA concludes that impacts on air quality during construction will be temporary and insignificant because they will not result in a substantial adverse change in the physical environment.⁶¹ Likewise, construction of the motocross park, Cattle Drive Project, and Eldridge Road will result in temporary and minor emissions, including fugitive dust emissions associated with vehicle movement, and the combustion of gasoline and diesel fuels. The anticipated recreational use of the motocross park will also result in ongoing fugitive dust emissions and combustion of gasoline and diesel fuels. The proposed project's operational emissions will be minor and intermittent, so while some cumulative impacts could occur, they will not be significant.

81. The EA concludes that noise impacts associated with the project are expected to be temporary, occurring primarily during the construction phase of the project.⁶² Noise will also be generated by any required construction of these additional projects, although that too is expected to be temporary and minor. Thus, when added together (assuming they were to occur at the same time), the cumulative impacts will be less than significant. No noise-sensitive areas were identified within 0.5 mile of any of the aboveground facilities associated with the proposed project, which are the only facilities with the potential to emit noise during operation of the project. As a result, there is not the potential for any noise-related cumulative effects associated with Paiute's project during operation.

⁶¹ See EA at B-60 to B-65.

⁶² See EA at B-65 to B-68.

82. In summary, even when adding these additional projects, it does not change the conclusion in the EA that no significant cumulative effects are anticipated when the impacts of Paiute's project are added to the identified projects in the cumulative effects study area.

i. Alternatives

83. Nevada Attorney General and Prospector submitted comments regarding the No Action Alternative. Nevada Attorney General requests an assessment of the need for the project and states that "there is no current need and won't be until the 2017/2018 heating season." Prospector also recommends that the Commission select the No Action Alternative.

84. Paiute has designed the proposed Elko Area Expansion Project to provide 21,994 Dth/day of incremental transportation service to a growing gas market in the Elko, Nevada area. This incremental capacity is fully subscribed by Southwest-NN's and Newmont's precedent agreements. As the No Action Alternative would not meet the project objectives, it was not recommended for further analysis in the EA.⁶³ We agree with that conclusion.

85. Nevada Attorney General and Prospector also submitted comments about the Prospector System Alternative, stating that the EA should not have dismissed the alternative.⁶⁴ Nevada Attorney General asserts that the EA examined the Prospector System Alternative without obtaining all the information necessary to determine whether it is a viable alternative that meets the project objectives, and that the Commission should take further steps to resolve outstanding factual issues.

86. The Prospector System Alternative is a proposed pipeline route consisting of an interconnection of Prospector's⁶⁵ North Elko and Eureka Pipelines, Newmont's existing 6-inch diameter Newmont Pipeline, and Paiute's existing facilities (i.e., either or both Paiute's Elko Lateral or its 12-inch diameter "holder" or "bottle facilities that parallel the Elko Lateral). According to Prospector, the combination of these facilities would provide sufficient capacity directly between Ruby and the Elko City Gate to meet the Elko Area Expansion Project's requirements. Specifically, Prospector's North Elko Pipeline is a

⁶³ See EA at C-1.

⁶⁴ In its filings, Prospector refers to the Prospector System Alternative as the "Prospector Solution Alternative.

⁶⁵ Prospector is a privately-owned public utility operating in Nevada under a certificate of public convenience and necessity issued by the Nevada PUC.

24.2-mile, 12-inch diameter pipeline providing natural gas service to the Barrick Goldstrike Mine from an interconnection with Ruby at the Willow Creek Meter Station. Prospector's 17.9-mile Eureka Pipeline is composed of two segments, a recently completed 3.1-mile, 12-inch diameter Leeville Pipeline segment, extending from the southern terminus of the North Elko Pipeline to the Newmont Leeville Mine and a proposed 14.8-mile, 12-inch diameter Gold Quarry Pipeline segment, which will extend from the southern terminus of the Leeville Pipeline to a connection with the Newmont Pipeline near the Newmont Gold Quarry Mine. The existing 5.1-mile Newmont Pipeline⁶⁶ extends from the Gold Quarry Mine to an interconnection with Paiute's 6-inch Elko Lateral at a location immediately adjacent to Paiute's 12-inch storage holder, or bottle, pipeline. In turn, the 12-inch holder line terminates at the Elko City Gate.

87. As the EA illustrates, implementation of the Prospector System Alternative is fraught with uncertainties and potential obstacles. The issues identified in the EA include regulatory constraints related to Prospector's Nevada PUC certificate authorization, equivalence of service, rates, type of service, project in-service date, engineering design, economic viability, and the availability of Newmont's and Paiute's facilities.

88. The regulatory constraints stem from the fact that Prospector's current Nevada PUC certificate authorization does not authorize it to provide the service contemplated by the Prospector System Alternative.⁶⁷ Prospector's Nevada PUC certificate of public convenience and necessity allows only for sales service to generating, large commercial and industrial customers and does not permit unbundled transportation services. Moreover, Prospector is exempt from cost-of-service rate-making requirements. Hence, Prospector would need some form of state regulatory approval for both the service and rates to serve Southwest-NN's Elko City Gate load. Prospector acknowledges that "it would need to obtain appropriate regulatory approval to provide the natural gas service via the Prospector [System Alternative],"⁶⁸ and is confident that such authorization from the Nevada PUC could be obtained. However, Prospector does not provide any information regarding the nature of services to be provided and the proposed rates for such services, rendering it difficult to assess what that regulatory approval might entail,⁶⁹

⁶⁶ Currently, the Newmont Gold Quarry Mine receives natural gas service from Paiute's Elko Lateral via the Newmont Pipeline.

⁶⁷ See Paiute November 10, 2014 Date Response, at 3.

⁶⁸ Prospector December 12, 2014 Reply at 13.

⁶⁹ Depending on how the service was structured, it could conceivably be provided on a non-jurisdictional basis pursuant to section 1(c), or as jurisdictional service under NGA section 7. However, Prospector is not clear as to what service it contemplates

(continued ...)

and whether it can be obtained in time to meet the project's proposed November 1, 2015 in-service date.

89. In addition, Paiute has plausibly explained that since its existing Elko Lateral and/or 12-inch holder line lack the capacity necessary to serve as a connection between the southern terminus of Prospector's Eureka Pipeline to the Elko City Gate, Paiute would have to construct approximately 15.8 miles of 8-inch diameter pipeline that would loop the Elko Lateral. Prospector does not account for the authorization required, or whether Paiute is willing, to construct that pipeline segment.⁷⁰

90. Prospector also suggests that Paiute's failure to claim that its Elko Lateral and/or 12-inch holder line were unavailable in the cases of the Major Route Alternative-1 (MRA-1)⁷¹ or the LNG System Alternative⁷² belies its claim that these segments were unavailable for the Prospector System Alternative. However, as indicated in the EA, both MRA-1 and the LNG System Alternative would result in greater environmental impacts than the proposed action. Thus, the EA concludes that further analysis regarding engineering or operational constraints was not warranted.⁷³ We agree with this conclusion.

91. The economic viability issues surrounding the Prospector System Alternative stem from Southwest-NN's assessment that the Prospector System Alternative was infeasible "based on the estimated length of the project, various incremental costs associated with

providing and which appropriate regulatory approvals would be required for its alternative project (*see, e.g.*, Prospector December 18, 2014 Reply at 6).

⁷⁰ Prospector acknowledges in their comment letter that use of the Newmont Pipeline would require the termination of the contract to receive gas from Paiute to use at the Gold Quarry Mine and the potential new construction of 5.1 miles of pipeline in or near the Newmont Pipeline.

⁷¹ The MRA-1 is a system that would loop the existing Elko Lateral and require the construction of 115 miles of new 12- and 20-inch diameter pipeline and connect to Paiute's 12-inch "holder" line.

⁷² This alternative involves a combination of diverting gas flows on Paiute's mainline to the Reno, Carson City, and Lake Tahoe areas, together with modifications to Paiute's liquefied natural gas plant at Lovelock, Nevada to replace the diverted gas, and would also involve about 113 miles of new 12-inch diameter pipeline looping that would connect to Paiute's 12-inch "holder" line.

⁷³ EA at C-4 to C-5 and C-10 to C-12.

transporting natural gas to its anticipated delivery point, and other regulatory concerns.”⁷⁴ According to Prospector, Southwest-NN “summarily” came to this “unsupported conclusion” after a brief meeting with Prospector in November 2012.⁷⁵ It is neither appropriate nor necessary that the Commission further inquire into Southwest-NN’s reasons for this business judgment. Prospector states the fact that Newmont has executed a “Special Service Contract” with Prospector as an alternative to receiving natural gas service from Paiute’s Elko Area Expansion Project demonstrates the viability, as well as the market preference, of its alternative project. However, Newmont has committed to only approximately three percent of the proposed project’s capacity, as contrasted with Southwest-NN’s commitment to 97 percent of the project’s capacity. Southwest-NN’s unwillingness or reluctance to consider the Prospector System Alternative has some bearing on the feasibility of that project.

92. Nevada Attorney General, Prospector, and BLM also question the need for a November 1, 2015 in-service date. The precedent agreements demonstrate evidence of market need for the project. The November 1, 2015 in-service date is an essential term of those agreements and thus a component of the project’s objectives. Consistent with our policy of not evaluating shippers’ business decisions to acquire capacity, we will not question Southwest-NN’s need for service to commence in November 2015. Consequently, our evaluation of the Prospector System Alternative included an assessment of whether the project objectives of providing 21,994 Dth/day of natural gas to the Elko City area by November 2015 could be met.

93. The EA acknowledges that the Prospector System Alternative would have a smaller environmental impact than the proposed project. However, the EA determined, and we agree, that the above described unresolved regulatory, engineering, and economic issues surrounding the Prospector System Alternative would make it impossible or highly impracticable for Prospector to meet the project’s objectives and was not a reasonable system alternative.⁷⁶ We further agree with the EA’s conclusion that the rejection of the Prospector System Alternative was appropriate in light of the fact that the proposed Elko

⁷⁴ See Paiute November 10, 2014 Data Response, at 3, citing Southwest-NN August 6, 2014 Response filed in Nevada PUC Docket No. 14-067013.

⁷⁵ Prospector December 12, 2014 Reply at 6-7. We note that a later September 2014 meeting between Prospector and Southwest-NN resulted in a similar response. See *id.* at 8.

⁷⁶ See EA at C-9 to C-10.

Area Expansion Project would not significantly impact the environment with the implementation of Paiute's proposed mitigation and the environmental conditions imposed in this order.⁷⁷

j. Conclusion

94. We have reviewed the information and analysis contained in the EA and, based on the above, we agree with the conclusions presented in the EA. We find that if operated in accordance with Paiute's application, as supplemented, 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.

95. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷⁸

96. At a hearing held on May 14, 2015, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, as supplemented, and all comments submitted herein, and upon consideration of the record,

⁷⁷ See *Save Our Cumberland Mountains v. Kempthorne*, 453 F.3d 334, 343 (6th Cir. 2006) ("when an agency permissibly identifies few if any environmental consequences of a project, it correspondingly has fewer reasons to consider environmentally sensitive alternatives to the project"); see also *Sierra Club v. Espy*, 38 F.3d 792, 803 (5th Cir. 1994) ("[A]lthough consideration of some range of alternatives is essential to any environmental assessment, it makes little sense to fault an agency for failing to consider more environmentally sound alternatives to a project which it has properly determined, through its decision not to file an impact statement, will have no significant environmental effects anyway.")

⁷⁸ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Paiute authorizing the construction and operation of the Elko Area Expansion Project facilities, as more fully described in the application, as supplemented, and in the body of this order.

(B) The certificates issued herein are conditioned on Paiute's compliance with the environmental conditions set forth in the appendix to this order and all of the applicable regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(C) Prior to commencement of construction, Paiute must execute contracts for service at levels and under terms and conditions equivalent to those which it represented were subscribed under the precedent agreements.

(D) The facilities authorized here shall be constructed and made available for service within two years of the date of the order in this proceeding, as required by section 157.20(b) of the Commission's regulations.

(E) Paiute's proposed cost of service for the Elko Area Expansion Project is approved with the exceptions of the costs noted in the discussion above.

(F) Paiute's proposed rate design for firm transportation on the Elko Area Expansion Project is approved.

(G) Paiute is required to establish an initial interruptible transportation charge equal to a 100 percent load factor of the firm transportation rate for service on the Elko Area Expansion Project.

(H) Paiute shall file actual tariff records reflecting the rates and fuel retainage percentages not less than 30 days, or more than 60 days, before the date Paiute's Elko Area Expansion Project facilities go into service. This filing shall include work papers in electronic spreadsheet format, including formulas, which support initial rates revised to reflect the approved cost of service.

(I) Paiute is required to account for the construction and operating costs and revenues for the project separately in accordance with section 154.309 of the Commission's regulations, as described further above.

(J) Paiute's proposed prohibition of imbalance trading between its existing system and the Elko Area Expansion Project is rejected.

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

(L) Northern Nevada's and Prospector's untimely motions to intervene are granted.

(M) The motions for an evidentiary hearing and technical conference are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Environmental Conditions

As recommended in the EA and modified herein, this authorization includes the following conditions:

1. Paiute 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. Paiute must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the 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 Elko Area Expansion 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**, Paiute shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Paiute 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.

Paiute's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Paiute'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 facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Paiute 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 the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements that 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 authorization and before construction begins**, Paiute shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Paiute must file revisions to the plan as schedules change. The plan shall identify:
- a. how Paiute 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 Paiute 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 per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company 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 Paiute 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 Paiute's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Paiute will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Paiute shall employ at least one EI per construction spread. The EIs shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Paiute shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Paiute'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 EIs 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 that 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 Paiute from other federal, state, or local permitting agencies concerning instances of noncompliance, and Paiute's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Paiute shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Paiute 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 the right-of-way and other areas affected by the Project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Paiute 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 conditions in the Order Paiute 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.
12. **Prior to construction of the Adobe Creek and Pie Creek horizontal directional drills (HDD)**, Paiute shall file with the Secretary, for review and written approval by the Director of OEP, the final HDD design crossing profiles that include the recommendations in Paiute's draft HDD Plan, any revised Pipeline HDD Hydrofracture Calculations, and any revised Pipeline HDD Designs, included as Tasks 1 and 2 in the Draft Trenchless Design Submittal.
13. **Prior to construction**, Paiute shall file with the Secretary the results of preconstruction environmental surveys for migratory birds, greater sage-grouse, burrowing owl, and pygmy rabbits. Paiute shall include any BLM comments on

those surveys, and identify any additional proposed mitigation measures, for the review and written approval of the Director of OEP.

14. **Prior to construction**, Paiute shall file with the Secretary, for review and written approval by the Director of OEP, the results of a survey of the proposed pipeline route coordinated and conducted with the assistance of Tribal monitors to identify plant species of concern to the Te-Moak Tribe. Plants identified as important to the Tribe shall be noted and specimens collected for positive identification. Paiute shall identify avoidance measures for areas of high concentration of plants of concern. If avoidance is not proposed, Paiute shall identify mitigation measures, including plans to re-seed the plants in the same areas as found.
15. Paiute shall not begin construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Paiute files with the Secretary:
 - i. an avoidance or treatment plan for site 26EK14693;
 - ii. any additional cultural resources survey reports, site evaluation report(s), and avoidance/treatment plan(s), as required; and
 - iii. comments on any cultural resource reports or plans from the BLM and Nevada SHPO.
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the Commission staff reviews, and the Director of OEP approves, any cultural resources reports or plans, and notifies Paiute in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”**