121 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Cheyenne Plains Gas Pipeline Company, LLC Docket No. CP07-128-000

ORDER ISSUING CERTIFICATE

(Issued December 20, 2007)

1. On April 2, 2007, Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to construct and operate a new compression facility, the Kirk Compressor Station, comprising one 10,310 horsepower compressor unit, to be located in Yuma County, Colorado. The facilities are designed to allow the transportation of up to 70,000 Dekatherms (Dth) per day on the Cheyenne Plains mainline for Coral Resources, Inc. (Coral). For the reasons discussed below, the requested certificate authorization is granted subject to certain conditions.

I. Background and Proposal

2. Cheyenne Plains, a natural gas company under the NGA, is a limited liability corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business located in Colorado Springs, Colorado. Cheyenne Plains is authorized to conduct business in the states of Colorado, Wyoming, and Kansas. It engages in open-access transportation services in those states and owns and operates transmission facilities within the states of Colorado and Kansas. The Cheyenne Plains system originates at the Cheyenne Hub in Weld County, Colorado, where it interconnects with various interstate pipelines, including its affiliate, Wyoming Interstate Company (WIC). Cheyenne Plains' system extends to various delivery points with other interstate pipelines near Greensburg in Kiowa County, Kansas.

Open Season and Off-System Capacity

3. In December 2005 and January 2006 Cheyenne Plains conducted an open season soliciting interest in additional pipeline capacity on its system, and also sought turnback capacity from existing shippers. Some shippers expressed interest in releasing capacity, but no shipper submitted a completed offer to Cheyenne Plains. Only Coral expressed interest in contracting for new service on Cheyenne Plains.

4. However, Coral's transportation requirements exceeded the resources of Cheyenne Plains' system. Specifically, Coral was seeking natural gas transportation service from the Green River and Overthrust Basins near Opal in Lincoln County, Wyoming to Greensburg in Kiowa County, Kansas. Coral sought to transport 125,000 Dth per day of natural gas from Opal by means of third-party transportation service to the Cheyenne Hub, to deliver approximately 35,000 Dth per day upstream of Cheyenne Plains at the Cheyenne Hub, and to transport the remaining 90,000 Dth per day of capacity on Cheyenne Plains' system to Greensburg.

5. Cheyenne Plains accepted Coral's offer and agreed to transport gas from Opal to Greensburg, subject to the successful acquisition of off-system capacity and any necessary regulatory approvals for the expansion on Cheyenne Plains' system. Coral and Cheyenne Plains executed a twelve-year negotiated rate precedent agreement for up to 125,000 Dth per day of capacity from Opal to the Cheyenne Hub and Greensburg. The arrangement calls for transportation service to originate at production areas near Opal in Wyoming and delivery into Cheyenne Plains' system at the Cheyenne Hub in Colorado.

6. To enable Cheyenne Plains to transport the 125,000 Dth per day from Opal to the Cheyenne Hub, Cheyenne Plains contracted with WIC for service. In March 2006, WIC entered into an agreement with Questar Overthrust Pipeline Company (Overthrust) to acquire off-system capacity from Opal to WIC's Kanda Meter Station, located on the western terminus of WIC's interstate system. During September 2006, WIC conducted an open season soliciting interest in available capacity from Opal to the Cheyenne Hub. At the conclusion of WIC's open season, Cheyenne Plains successfully bid and entered into a transportation agreement with WIC for up to 125,000 Dth per day of service originating at Opal and terminating at the Cheyenne Hub. Cheyenne Plains agreed to pay WIC's maximum recourse rate for a term of 12 years. This agreement will enable Cheyenne Plains to meet the contractual arrangements of its precedent transportation agreement with Coral.

7. Once Cheyenne Plains secured the off-system capacity, the expansion design necessary for its own system to accommodate Coral's 90,000 Dth per day service from Cheyenne Hub to Greensburg included the construction of two Solar Taurus 70 compressors at a mid-point location on Cheyenne Plains' system. Cheyenne Plains states that when, as part of its efforts to keep customers informed of major system changes, Cheyenne Plains advised its existing shippers of the pending system expansion during December 2006, numerous shippers informed Cheyenne Plains of their interest in turning back existing capacity. Cheyenne Plains states that notwithstanding the facts that it had already offered an opportunity for turn back during the open season which closed in January 2006 and that it had already finalized the facility design to meet Coral's transportation needs, Cheyenne Plains conducted a second open season, from January 29

to February 12, 2007, to respond to customer interest in turning back existing capacity.[1] In this open season, Cheyenne Plains stipulated that any acceptable turnback offers would be subject to an exit fee.

8. Cheyenne Plains' notice regarding the 2007 Open Season/Reverse Auction[2] stated that a turnback shipper shall remain responsible for the "difference between the rate at which the capacity is released and the reservation rate under the [releasing] shipper's FTSA with Cheyenne Plains for the remaining term of the releasing shipper's FTSA, but will not be responsible for any commodity charges, ACA, Fuel, Lost and Unaccounted For, or any other authorized usage surcharges associated with the released capacity, nor shall shipper be entitled to any credits associated with such capacity."[3]

9. Cheyenne Plains also stated it would evaluate all offers for permanent release "based on the avoided cost of the construction of additional capacity, including all costs incurred to date and any foregone revenues associated with the anticipated construction of the additional 90 MDth/day of capacity."[4] Cheyenne Plains stated further that it anticipates that to be in a state of economic indifference between the turnback offer and the proposed expansion, it must receive offers for the permanent release of 90 MDth/day at a monthly reservation rate at or below $4.7146/Dth (equivalent to approximately $0.155/Dth on a 100 percent load factor basis).

10. Cheyenne Plains requested confidential treatment of the provisions of its precedent agreement with Coral, and certain references it made to such provisions in its pleadings. Cheyenne Plains stated that Coral considered such terms commercially sensitive information. By letter dated October 25, 2007, the Commission's General Counsel, Cynthia A. Marlette, notified Cheyenne Plains that Cheyenne Plains' request for privileged and confidential treatment for its precedent agreement with Coral, and references to certain of its terms included in Cheyenne Plains' pleadings in the proceeding, on the grounds that it contained commercially sensitive information, was denied, pursuant section 388.112(e) of the Commission's regulations. The letter noted that a person requesting privileged treatment for information in a document must justify

[1] Cheyenne Plains states that, although conducting a second open season for turnback capacity is not required by Commission policy or precedent, Cheyenne Plains opted to hold such an open season to accommodate its shippers' desire for this type of open season.

[2] *See* Application, Exh. I, Tab 1.

[3] *Id.*, page 1.

[4] *Id.*, page 2.

the request with specific rather than vague and speculative assertions of harm. Cheyenne Plains' assertions were made without explanation, and its request for privileged treatment was denied.

11. On October 30, 2007, in response to a staff data request dated October 22, 2007, Cheyenne Plains explained the derivation of the $0.155/Dth rate referenced in the January 2007 open season/reverse auction posting. Cheyenne Plains states because it had proceeded to develop its expansion project after its initial (December 2005) open season had yielded no turnback capacity, it needed to impose the $0.155/Dth limitation on acceptable turnback offers during the second open season in order to remain economically neutral if it were to accept such offers and cancel its plans to construct the Kirk Compressor Station.

12. Cheyenne Plains states the original design for the project entailed the construction of two Solar Taurus 70 compressor units at a capital cost of approximately $26.4 million. Cheyenne Plains estimated that it would have received approximately $4.2 million in earnings before interest and income tax (EBIT) providing 90,000 Dth of service using this project design.

13. Cheyenne Plains estimated that by the time of the second open season, it had already incurred $2.7 million in capital costs for the designed expansion (including cancellation costs for ordered equipment). Cheyenne Plains estimated that it could receive an EBIT of $2.7 million by investing the capital remaining after cancellation ($26.4 million - $2.7 million = $23.7 million) in another project, leaving EBIT of $1.5 million to be recovered for economic neutrality ($4.2 million - $2.7 million = $1.5 million). That could be accomplished if Cheyenne Plains earned $0.045/Dth for the 90,000 Dth of service to be provided to Coral. Pursuant to its precedent agreement, Coral would be paying a rate equivalent to $0.20/Dth for service over Cheyenne Plains' facilities from the Cheyenne Hub to Greensburg. Thus, Cheyenne Plains calculated that it could pay no more than $0.155/Dth for turnback capacity ($0.045 + $0.155 = $0.20). As indicated, the releasing shipper would remain responsible for the difference between its contract rate and the $0.155/Dth.[5]

14. Cheyenne Plains states that another way to assess the reasonableness of its turnback rate is to determine the avoided cost of the expansion. If Cheyenne Plains could pay an existing shipper an amount at or below the avoided cost of the expansion,

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[5] Cheyenne Plains states that it is scheduled to submit a cost and revenue study in early 2008, pursuant to a certificate requirement in Docket No. CPO3-302-000, and that all revenue and cost items will be available for Commission and customer review at that time.

Cheyenne Plains states that it would remain economically neutral to purchasing the needed capacity back from an existing shipper instead of building the expansion. Cheyenne Plains calculates the avoided cost of the expansion as follows:

Estimated Cost of Service[6] / Capacity[7] = Avoided Cost
4.94 million / 32.85 MMDth = $0.15/Dth

15. Thus, Cheyenne Plains states that the avoided cost of the expansion capacity is approximately 15 cents. By agreeing to pay up to $0.155/Dth for turnback capacity, Cheyenne Plains' decision to purchase turnback capacity or construct the expansion capacity was economically neutral. Cheyenne Plains states that under these circumstances, an avoided cost calculation represents an appropriate benchmark against which to measure the reasonableness of Cheyenne Plains' maximum bid requirement of $0.155/Dth.

16. EnCana Marketing (USA) Inc. offered to release 90,000 Dth/day on Cheyenne Plains' system at its negotiated monthly reservation rate of $10.3417/Dth (equivalent to $0.34/Dth per day on a 100 percent load factor basis). By letter dated February 16, 2007, Cheyenne Plains stated it would not accept EnCana's offer, and also noted its understanding that EnCana had had direct communications with Coral, and "that EnCana has been unable or unwilling to release its capacity to the expansion shipper at a rate acceptable to that expansion shipper."[8] Cheyenne Plains states in its application (page 7, n.4) that "the cost to Cheyenne Plains of [EnCana's offer of turnback] did not compensate Cheyenne Plains for Coral Energy's contracted arrangement and did not reimburse Cheyenne Plains for costs incurred in developing that Project. Thus, Cheyenne Plains rejected [EnCana's] offer of turnback."

17. Cheyenne Plains states that at the conclusion of its second open season, only one shipper offered to turn back capacity that met Cheyenne Plains' criteria. OGE Energy Resources Inc. (ER) offered to release 55,000 Dth per day of its capacity, which was 35,000 Dth per day short of the 90,000 Dth per day required by Coral. Cheyenne Plains states that it considered various project design options that would permit it to use all or part of the offered capacity, but that no cost-effective capacity expansions for 35,000 Dth

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[6] Cheyenne Plains states that the estimated cost of service is based on 18.7 percent of capital cost (less Account No. 858 costs), and that the 18.7 percent is equivalent to the Exhibit N showing in Docket No. CP07-128-000 on the $20.3 million capital project.

[7] 90,000 Dth x 365.

[8] *See* EnCana's Motion to Intervene, Protest and Motion for Summary Dismissal at Ex. E, page 2.

per day were found. Cheyenne Plains thus determined that utilizing 20,000 Dth per day of the ER turnback capacity would yield the most efficient, economical, and properly sized configuration for this project. Cheyenne Plains states that it thus accepted a turnback of 20,000 Dth per day of capacity from ER.

18. As a result of the turnback capacity from ER, Cheyenne Plains downsized its planned expansion and requests authorization for the construction and operation of a single Solar Taurus 70 compressor unit capable of increasing its mainline capacity by 70,000 Dth per day, at an estimated cost of $20,294,000, outside the Town of Kirk in Yuma County, Colorado. The proposed project will permit ER to turn back a portion of its capacity and serve the transportation needs of Coral while reducing the amount of new compression needed. Cheyenne Plains states that it designed the project solely to increase capacity on the mainline and that there will be no expansions into market areas already served by existing pipelines. Cheyenne Plains plans to finance the project through internally-generated funds. Cheyenne Plains seeks a predetermination that rolling the combined costs, including fuel costs, of the expansion project and costs associated with acquiring off-system capacity into its system rates will be appropriate.[9]

II. Notice, Interventions, Comments and Protests

19. Notice of Cheyenne Plains' application was published in the *Federal Register* on April 18, 2007 (72 Fed. Reg. 19,485) with comments, protests and interventions due by May 3, 2007. Timely motions to intervene were filed by ER, Coral, Anadarko Petroleum Corporation and Anadarko Energy Services Company, BP America Production Company and BP Energy Company (BP), EnCana Marketing (USA) Inc. (EnCana).[10] Protests were filed by EnCana, BP, and ER.[11]

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[9] Application at 2.

[10] Timely motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 CFR § 385.214(d). Chevron Natural Gas, A Division of Chevron U.S.A. Inc., filed an untimely motion to intervene showing good cause and in accord with the other requirements of Rule 214 (d). The late motion to intervene is granted.

[11] Several parties filed answers to protests, and answers to answers, including Cheyenne Plains, ER, Coral, and BP. In accord with the prior cases cited by these parties, the Commission construes Rule 213 to allow the filing of all pleadings submitted in this proceeding because they clarify the issues and provide information that assists in our decisionmaking. *See, e.g., Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 61,136, at P 4 (2006).

20. EnCana's protest, joined in by ER, argued that Cheyenne Plains' 2007 open season for turnback offers was defective because Cheyenne Plains established a maximum bid level for turnback capacity not consistent with Commission policy. EnCana argued that Cheyenne Plains should have required a turnback shipper to remain responsible only for the difference between the contract rate to be paid by the expansion shipper and Cheyenne Plains' maximum recourse rate. Further, EnCana and ER argued that Cheyenne Plains should have made public that portion of the $0.45 per Dth contract price to be paid by Coral reflecting service on Cheyenne Plains' system.

21. On September 28, 2007, EnCana filed a Motion to Withdraw its April 13, 2007 Protest and Motion for Summary Dismissal of Cheyenne Plains' certificate application, stating that it no longer wished to turnback capacity. However, EnCana stated that it would not object to the Commission resolving the issue of what maximum bid level would have been appropriate in this case. On October 15, 2007, Cheyenne Plains filed an Answer to EnCana's motion, stating that ER's protest has been rendered moot because ER's turnback offer of 55,000 Dth per day was insufficient to be responsive to the 90,000 Dth per day required by Coral. Cheyenne Plains states that ER's offer could be considered only in conjunction with EnCana's capacity offered for turnback, and that since EnCana no longer seeks to turnback capacity, ER's protest is moot.

III. Discussion

22. Since the application is for facilities that will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Cheyenne Plains' proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

23. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.[12] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by

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

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.

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

25. We discuss more fully below the rate treatment proposed by Cheyenne Plains, but we note here that the new shipper will pay a negotiated rate which covers the cost of the proposed compressor station. Existing shippers will experience no rate increase. In addition, Cheyenne Plains' expansion will provide benefits to natural gas consumers by providing additional access to Rocky Mountain supplies. Cheyenne Plains designed the compressor project based on the contractual commitment executed by Coral after public open seasons. Further, since the proposal will transport new supplies, no existing pipelines or their captive customers will be affected. Additionally, impacts to landowners will be minimal because all construction activities will be undertaken on land owned by Cheyenne Plains. Because the proposal can proceed without subsidies, is fully subscribed, will not adversely affect other pipelines or their shippers, and will have minimal impacts on landowners and the environment, the compressor addition is required by the public convenience and necessity.

B. Expansion Service

1. Precedent Agreement

26. Cheyenne Plains and Coral Energy executed a twelve-year negotiated rate precedent agreement for up to 125,000 Dth per day of capacity from the Opal Hub in Wyoming to the Cheyenne Hub and then to the South Rattlesnake Creek Delivery Point near Greensburg, Kansas. Cheyenne Plains states in its application (page 10) that the agreement provides for two separate rates for two separate services. The first rate of \$0.45 per Dth per day is for service provided from Opal (upstream of Cheyenne Plains), and delivered to Greensburg on the Cheyenne system. The second rate of \$0.25 per Dth

per day is for service provided from Opal and delivered to off-system points upstream of the Cheyenne Hub. According to Cheyenne Plains, its negotiated rate agreement with Coral will recover revenues in excess of the project costs.

27. Initially, Cheyenne Plains will provide Coral with transportation service that will permit Coral to deliver 105,000 Dth per day of gas to the Cheyenne Hub and 25,000 Dth per day to the South Rattlesnake Creek Delivery Point near Greensburg, Kansas. This service becomes effective January 1, 2008, and terminates upon the in-service date of the Kirk Compressor Station facilities. When service commences from the new compressor station, Cheyenne Plains will reconfigure the service to permit delivery of 35,000 Dth per day to the Cheyenne Hub and the remaining 90,000 Dth per day (comprising 20,000 Dth in turnback capacity from ER and 70,000 Dth created by the new compressor station) to the South Rattlesnake Creek Delivery Point. The reconfigured delivery terms will remain in effect from the in-service date of the new Kirk Compressor Station through December 31, 2019.

28. Cheyenne Plains states that the precedent agreement contains four potentially non-conforming provisions which will terminate once the new Kirk Compressor service commences. Two of the non-conforming provisions allow for the termination of the transportation agreement if the regulatory authorizations and construction of project facilities are not secured or achieved by certain dates. The third provision affords Coral an "out provision" to terminate the transportation service agreement if the Commission imposes certain conditions unacceptable to both Cheyenne Plains and Coral. The fourth non-conforming provision calls for arbitration in lieu of litigation for disputes between Coral and Cheyenne Plains and denies both parties any ability to seek damages through litigation regarding contractual disputes. Cheyenne Plains plans to revise the transportation agreement to remove the four provisions and states that the revised agreement applicable to the new compressor service will contain no non-conforming provisions.

Discussion

29. As Cheyenne Plains states, the four provisions it cites in its precedent agreement would constitute non-conforming provisions if they were included in its service agreement with Coral. Cheyenne Plains states that it will remove these provisions prior to the in-service date of the Kirk Compressor Station and will file the conforming negotiated rate agreement with the Commission.

2. 2007 Open Season Turnback Terms

30. ER states that Commission policy requires that Cheyenne Plains' maximum recourse rate should have been the maximum rate specified for turnback capacity in the 2007 open season.[13] ER argues that the "arbitrarily selected value of $0.155/Dth" is unsupported and the Commission must find Cheyenne Plains' open season defective. ER states that it and EnCana have been given no meaningful opportunity to evaluate and challenge the bid selection criteria used by Cheyenne Plains. ER also argues that the evidence shows that the negotiated rate Coral will pay is more than sufficient to cover Cheyenne Plains' maximum recourse rate plus the cost of the off-system capacity.

31. ER does not contest the economics or operational judgment supporting Cheyenne Plains' decision to combine the new compressor with 20,000 Dth per day of ER's turnback capacity. Rather, it argues that Cheyenne Plains should be directed to conduct a new reverse open season specifying Cheyenne Plains' maximum recourse rate as the maximum acceptable bid.

32. Cheyenne Plains answers[14] that ER's statement of Commission policy is wrong, and that Commission policy regarding appropriate pipeline conditions on acceptable turnback capacity offers does not require a maximum turnback bid equal to the pipeline's maximum recourse rate. Cheyenne Plains also disputes the accuracy of ER's attempt to calculate the price of the on-system segment of the entire transportation service contracted for by Coral. Cheyenne Plains states that any revenues generated by this project can only be reasonably assigned to either segment of the seamless path by reference to the negotiated rate contract itself.

Discussion

33. Cheyenne Plains' application (page 10) provides that Coral will pay two specified rates. First, it will pay $0.45 per Dth for the seamless service from Opal to Greensburg, Kansas. Second, it will pay $0.25 per Dth for the off-system service from Opal to

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[13] May 3, 2007 Motion of ER to Intervene, Protest, and Motion for Leave to Answer at 11, *citing Algonquin Gas Transmission Co.*, 87 FERC ¶ 61,262 at 61,990-91 (1999) (*Algonquin*), *citing Columbia Gas Transmission Corp.*, 78 FERC ¶ 61,030 (1997), *reh'g denied*, 79 FERC ¶ 61,160 (1997); ER also cites *Transwestern Pipeline Co.*, 90 FERC ¶ 61,032, at 61,159 (2000) (*Transwestern*) (pipeline not required to accept a turnback offer where turnback shipper was unwilling to turn back at less than the fixed rate it was obligated to pay and the "market was unwilling to accept that rate.").

[14] *See* Motion of Cheyenne Plains for Leave to Answer, filed May 24, 2007, at 5-6.

delivery points at or upstream of Cheyenne Hub, the western limit of Cheyenne Plains' system. As Cheyenne Plains explains,[15] "[b]y deduction therefore, the equivalent rate on the Cheyenne Plains expansion was $0.20/Dth." The $0.20/Dth reflects the amount of revenue Cheyenne Plains would allocate to Coral's service on the Cheyenne Plains expanded system.[16] Cheyenne Plains does not provide a separate rate for the new expansion service; rather, the rate for the expansion service is included in the $0.45 per Dth rate from Opal, Wyoming, to Greensburg, Kansas. We note that Coral has negotiated valuable options, including the option to deliver some or all of its capacity upstream to Cheyenne Hub and to take service at the lower rate of $0.25 per Dth per day only across the Overthrust and WIC systems.

34. As stated in the Certificate Policy Statement,[17] the first step in determining whether the market finds an expansion project economically viable is for the pipeline to conduct an open season prior to the certificate application in which existing customers are given an opportunity to permanently relinquish their capacity.[18] This first step ensures that a pipeline will not expand capacity if the demand for that capacity can be filled by existing shippers relinquishing their capacity.[19]

35. The requirement that a pipeline must offer existing shippers the opportunity to release capacity prior to applying for authorization to construct facilities does not, however, require the pipeline to accept offers of turnback capacity that would result in an economic loss for the pipeline. That would have been the result if Cheyenne Plains used its maximum recourse rate of $.35 as the maximum rate for turnback capacity as ER maintains Cheyenne Plains should have done. ER's reliance on *Algonquin* to support this position is misplaced. In *Algonquin* the expansion shipper agreed to pay both the system firm transportation rate and an incremental surcharge established to cover the cost of

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[15] *See* May 24, 2007 Motion for Leave to File Answer and Reply, and Answer and Reply at page 7.

[16] Cheyenne Plains has the right under its tariff to negotiate a service rate with Coral different from the maximum recourse rate provided in the tariff.

[17] 90 FERC ¶ 61,128 at 61,392 (2000).

[18] *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241, at 61,917 (1995), *reh'g denied*, 75 FERC ¶ 61,105 (1996).

[19] The second step, not relevant to this discussion, is that the expansions shippers must be willing to purchase capacity at a rate that pays the full cost of the project without subsidy from existing shippers.

service on the expansion facilities. The Commission found no violation of Commission policy where the pipeline's open season notice stated that it would accept firm capacity turnbacks from other incremental rate shippers only if they were willing "to pay the difference between their incremental rate and the rate that [the expansion shipper] would pay for the turned-back capacity."[20]

36. The Commission reached a similar conclusion in *Transwestern* where the pipeline was not required to accept a turnback offer from a shipper unwilling to turn back capacity at less than the fixed rate it was obligated to pay and the "market was unwilling to accept that rate."[21] Further, the Commission has noted that it has only required pipelines to consider and evaluate offers of turnback capacity which are "similar to the proposed expansion facilities in terms of location, term, and price."[22]

37. In its October 30, 2007 data response, Cheyenne Plains provided a full explanation of its methodology for determining the maximum turnback bid level for the 2007 open season needed to keep it economically indifferent to whether it used turnback capacity or constructed new capacity.[23] We find no principled difference between the protections afforded Algonquin and Transwestern by the holdings in those proceedings and the economic indifference test used by Cheyenne Plains in establishing the maximum turnback bid level in its 2007 open season. In both *Algonquin* and *Transwestern*, the pipeline required the releasing shipper to pay the difference between the rate agreed to by the releasing shipper and the rate agreed to by the expansion shipper, to keep whole the financial interest of the pipeline. Although the expansion shippers in these cases were not paying negotiated rates as is Coral, the principle remains the same. The pipeline is not required to accept turnback capacity at a price less than that necessary to keep it financially whole.

38. ER contends that Cheyenne Plains' statement that it was not required by Commission policy to conduct the second open season in 2007 is wrong. We agree with Cheyenne Plains that, under the circumstances, ER has presented no convincing

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[20] 87 FERC at 61,990-91 (1999) *citing Columbia Gas Transmission Corp.*, 78 FERC ¶ 61,030 (1997), *reh'g denied*, 79 FERC ¶ 61,160 (1997).

[21] 90 FERC at 61,159 (2000).

[22] *PG&E Gas Transmission*, 84 FERC ¶ 61,204, at 62,001 (1998).

[23] We note that no party has filed further protest to the terms of the 2007 open season since Cheyenne Plains filed its data response explaining how it determined the maximum bid level for turnback offers. We described Cheyenne Plains' methodology at length in the introductory section of this order.

argument that Cheyenne Plains was required to conduct a second open season. However, having done so, Cheyenne Plains was required to comply with Commission policy with respect to appropriate turnback bid levels in open seasons. We believe Cheyenne Plains has complied with that policy.

39. Further, ER's reliance on *Texas Eastern Transmission Corp.*,[24] for the proposition that service over the off-system capacity must be charged at Cheyenne Plains' maximum recourse rate is misplaced. In *Texas Eastern*, the Commission noted that the acquiring pipeline must treat the acquired capacity as though it were part of its own system and "must be at risk for the cost of that capacity. Pipelines seeking to recover costs of the acquisition will have to justify the inclusion of such costs in a section 4 rate filing…."[25] So it is here. Cheyenne Plains' allocation of costs of the expansion project will be subject to scrutiny and argument under NGA sections 4 or 5.

C. <u>Rate Proposal</u>

1. <u>Rolled-In Rates</u>

40. Cheyenne Plains requests that the Commission issue a predetermination favoring rolled-in rate treatment for the $20,294,000 of new compressor facilities costs and the related project fuel consumption since its calculations show that the revenues to be generated by the project will exceed the related incremental cost of service and the estimated fuel consumption for the project. Specifically, at Exhibit N page 4 of 5 to the application, Cheyenne Plains shows $17,976,252 in revenues collected from Coral, and further shows these revenues will exceed the $8.3 million cost of service by approximately $9.6 million in the first year.[26] Cheyenne Plains also included in its application an estimated fuel charge for the project of approximately 0.9357 percent, slightly below Cheyenne Plains' currently effective fuel rate of 0.94 percent.[27]

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[24] 93 FERC ¶ 61,273, at 61,886 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001), *reh'g and clarification denied*, 95 FERC ¶ 61,056 (2001) (*Texas Eastern*).

[25] *See* Motion of ER for Leave to Respond, filed June 7, 2007, at 5.

[26] Staff's review of Exhibit N shows that Cheyenne Plains calculated its cost of service for the Kirk Compressor Station using the cost components underlying its currently effective rates.

[27] In Appendix C to its May 1 Answer, Cheyenne Plains revised its estimated fuel percentage (on a worst case scenario basis) to 1.03 percent, or .09 percent above the currently effective fuel rate.

41. BP states that Cheyenne Plains fails to mention whether the expansion volumes will impact the operating costs of its amine plants[28] or whether the expansion volumes will require the increased use of other compressors. BP requests that Cheyenne Plains demonstrate in "greater detail that there will be no cross-subsidies resulting from the expansion with regard to all of its system operations, including all compressors and the amine plant." Further, BP requests that the Commission condition its approval of rolled-in rate treatment on a finding that Cheyenne Plains may not offset any revenue benefit by incremental fuel costs associated with the project to protect existing customers from any increased transportation or fuel rates as a result of the expansion. BP suggests that Cheyenne Plains file revised exhibits in a future compliance filing to demonstrate the net benefits to existing shippers after anticipated fuel (and other) costs are considered.[29]

42. BP also claims, in its Supplemental Protest, that Cheyenne Plains is not clear as to whether Coral will actually pay the fuel costs associated with the transportation on Overthrust/WIC. BP argues that the Commission previously approved rolled-in rate treatment of certain expansion costs, but required an incremental fuel rate by the one shipper using the expansion capacity.[30]

<u>Discussion</u>

43. In determining the impact on a pipeline's existing customers of a proposed project priced at a negotiated rate, the Commission calculates the project revenue using the pipeline's applicable maximum recourse rate.[31] This approach protects the existing customers from potential cross-subsidization, in that, if the negotiated rate is lower than the maximum recourse rate, the pipeline accepts the responsibility for any revenue

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[28] *Citing Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co., LLC*, 106 FERC ¶ 61,275, at P 23 (2004) (approving rolled-in rate treatment of amine plant costs).

[29] *Citing Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137, at 61,582 (2001).

[30] *Citing El Paso Natural Gas Co*., 104 FERC ¶ 61,303, at P 19 (2003) (*El Paso*). In *El Paso*, the incremental rate was proposed by the pipeline and approved by the Commission, conditioned on the tracking of fuel costs.

[31] *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 at 61,241, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, 1998 U.S. App. Lexis 20697 (D.C. Cir. 1998).

shortfall. In this case, our calculations show that the portion of the contract demand on Cheyenne Plains' system priced at Cheyenne Plains' maximum recourse rate will more than recover the costs of providing the expanded service to Coral, both on its system and on the off-system capacity. For this reason, we find that the project satisfies the Commission's certificate policy barring cross-subsidization of the project's costs by the pipeline's existing shippers and thus grant Cheyenne Plains' request for a predetermination of rolled-in rate treatment of the Kirk Compressor Station costs, barring any significant change in the circumstances presented by Cheyenne Plains in this proceeding.

44. With respect to rolling in the expansion fuel-related costs, the Commission will accept a pipeline's estimate of project costs and revenues, *including fuel charges and revenues*, as long as the pipeline's estimates are generally reasonable.[32] Accordingly, we will accept Cheyenne Plains' proposal, subject to Cheyenne Plains tracking the fuel attributable to the expansion volumes separately.[33] When Cheyenne Plains files its first fuel tracker after commencing service on its new Kirk compressor, the Commission's procedures will allow all of Cheyenne Plains' customers to challenge any fuel data reported therein. In the interim, we find that Cheyenne Plains' proposal will not harm its existing shippers because the shippers will continue to pay the currently effective fuel rate.[34] The concerned parties are further protected by the Commission's conditional approval of Cheyenne Plains' request for a predetermination for rolled-in rate treatment, in that the rate treatment is approved barring any significant change in the circumstances presented by the pipeline. If future rate review shows that the revenue benefits generated by the project are offset by the fuel consumption associated with the project, the Commission would consider such offset a significant change in circumstances.

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[32] *See, e.g., Southern Natural Gas Co.,* 113 FERC ¶ 61,199, at P 35-38 (2005) (approving pipeline's proposed rolled-in rate treatment based on estimated project and fuel costs.) *See also Southern LNG, Inc*., 101 FERC ¶ 61,187, at P 23-24 (2002) (declining to condition the predetermination of rolled-in rate treatment because the pipeline's revenues may decrease or its expenditures increase. The Commission found the protestors' concerns to be premature and speculative as they presented no evidence regarding the likelihood of either outcome.).

[33] *See Dominion Cove Point*, 115 FERC ¶ 61,337 at P 121 (2006).

[34] *See, e.g., Dominion Transmission Inc.*, 118 FERC ¶ 61,007, at P 125 (2007) (finding that until the rates are subsequently reviewed, "[t]he existing customers will not be affected because they will continue to pay the existing system-wide fuel costs….").

2. Negotiated Rate

45. Cheyenne Plains' precedent agreement with Coral is a negotiated rate agreement. Any service agreement signed with an expansion shipper containing a negotiated rate must comply with the Commission's *Alternative Rate Policy*,[35] its decision in *NorAm Gas Transmission Company (NorAm)*,[36] and the *Modification of Negotiated Rate Policy*.[37] In *NorAm*, the Commission required pipelines to file either their negotiated rate contract or a numbered tariff sheet 30 days prior to the commencement of the new service, stating for each negotiated rate transaction the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported and a statement that the agreement conforms in all material respects with the pro forma service agreement in the pipeline's FERC Gas Tariff.

46. On November 30, 2007, Cheyenne Plains submitted the firm transportation service agreement with Coral and Eighth Revised Tariff Sheet No. 1 to its FERC Gas Tariff, proposed to become effective January 1, 2008, concerning service to Coral before construction of the Kirk compressor proposed in this proceeding. Review of Cheyenne Plains' filing will be conducted in Docket No. RP08-103-000.[38]

D. Environmental Assessment

47. ER's May 3, 2007 Motion to Intervene, Protest and Motion for Leave to Answer and Answer contends that since the offers to turn back capacity constitute a "reasonable and viable no action alternative" to constructing the proposed compressor station, the

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[35] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996). In compliance with the Rate Policy, Cheyenne Plains must maintain a separate and identifiable account for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that the cost and revenue data related to the subject expansion can be identified in Statements G, I and J in any future NGA section 4 or 5 case.

[36] 75 FERC ¶ 61,076 (1996).

[37] 104 FERC ¶ 61,134 (2003). The Commission approved Cheyenne Plains' request to implement negotiated rate authority in Docket No. CP03-301-000, *et al.*, 106 FERC ¶ 61,275 (2004).

[38] On December 12, 2007, BP protested the filing made in Docket No. RP08-103-000, re-stating its opposition to rolled-in rate treatment for fuel costs. The Commission will review BP's protest in Docket No. RP08-103-000.

Commission should not devote any resources to an unnecessary environmental review. ER also states that Resource Report 10 in Cheyenne Plains' application is insufficient and therefore the Commission should reject the application.

48. We disagree with both contentions. First, the turnback offers are neither a no-action alternative nor, as discussed more thoroughly elsewhere in this order, a reasonable and viable alternative. A no action alternative is the denial of authorization to construct the project with no other action taken. The turnback offers are more in the nature of a system alternative under which an existing pipeline is used in place of constructing new facilities. The existence of an alternative does not preclude the environmental analysis of the proposal, since the discussion of alternatives is a required component of every National Environmental Policy Act-required environmental analysis.

49. Second, as required by section 380.12(l)(1) of the Commission's regulations, Cheyenne Plains discussed the consequences of the no action alternative, i.e., not approving the proposed compressor station, by stating succinctly that such action would "deny economical firm transportation to the shipper contracting for it." Since we find that Cheyenne Plains' discussion complied with our regulations, we will deny ER's request to reject the application.

50. On April 25, 2007, a Notice of Intent to Prepare an Environmental Assessment for the Proposed Kirk Compressor Station Project and Request for Comments on Environmental Issues (NOI) was issued. The comment period expired on May 25, 2007. No environmental comments in response to the NOI were received.

51. An Environmental Assessment (EA) was prepared for Cheyenne Plains' proposal.[39] The EA addresses geology, soils, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air quality, noise, reliability and safety, and alternatives.

52. Based on the discussion in the EA, if the proposal is constructed and operated in accordance with Cheyenne Plains' application filed April 2, 2007, and the conditions provided in the Appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

53. 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

[39] The EA was issued and placed in the record July 10, 2007.

approved by this Commission.[40] Cheyenne Plains shall notify the Commission's environmental staff by telephone, e-mail or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cheyenne Plains. Cheyenne Plains shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

E. Conclusion

54. At hearing held on December 20, 2007, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the Natural Gas Act is issued to Cheyenne Plains to install and operate the new Kirk Compressor Station, as described herein and more fully in its application.

(B) Any certificate authority issued in Ordering Paragraph (A) is conditioned as discussed in this order, and on the following:

(1) Cheyenne Plains shall complete authorized construction within one year of this order;

(2) Cheyenne Plains shall comply with paragraphs (a), (c), (e) and (f) of section 157.20 of the Commission's regulations; and

(3) Cheyenne Plains shall comply with the environmental conditions listed in the appendix of this order.

(C) Cheyenne Plains' request for a predetermination of rolled-in rate treatment is granted. Cheyenne Plains may roll in the costs of this expansion in its first NGA section 4 rate case filed after the proposed facilities are placed in service, provided that no significant material changes in circumstances occur.

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[40] *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); and *Iroquois Gas Transmission System, L.P.,* 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Cheyenne Plains 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 Cheyenne Plains. Cheyenne Plains shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

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

1. Cheyenne Plains 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 this Order. Cheyenne Plains 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 this 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**, Cheyenne Plains shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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. Cheyenne Plains shall make all reasonable efforts to assure its predicted noise levels from the Kirk Compressor Station are not exceeded at nearby noise sensitive areas (NSAs) and file noise surveys with the Secretary **no later than 60 days** after placing the Kirk Compressor Station in service. However, if the noise attributable to the operation of the Kirk Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Cheyenne Plains shall file a report on what changes are needed and shall install additional noise controls to meet the

level **within 1 year** of the in-service date. Cheyenne Plains shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.