

106 FERC ¶ 61,275  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Colorado Interstate Gas Company and	Docket Nos. CP03-301-000
Cheyenne Plains Gas Pipeline Company, LLC	CP03-302-000
	CP03-302-001
	CP03-302-002
	CP03-303-000
	CP03-304-000

ORDER ISSUING CERTIFICATES

(Issued March 24, 2004)

1. On October 22, 2003, the Commission preliminarily approved, subject to environmental review, Cheyenne Plains Gas Pipeline Company LLC's (Cheyenne Plains)<sup>1</sup> request for (1) authorization to construct and operate a new 380-mile interstate natural gas pipeline commencing at the Cheyenne Hub<sup>2</sup> in Colorado and terminating near Greensburg, Kansas; (2) a blanket transportation certificate pursuant to Part 284, Subpart G of the Commission's regulations; and (3) a blanket construction certificate pursuant to

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<sup>1</sup>On November 4, 2003, Cheyenne Plains converted from a Delaware corporation to a Delaware limited liability company thus changing its name from Cheyenne Plains Gas Pipeline Company to Cheyenne Plains Gas Pipeline Company, LLC. See Exhibit A to its amended application in Docket No. CP03-302-001.

<sup>2</sup>The Cheyenne Hub is a confluence of pipelines in northern Colorado near Cheyenne, Wyoming including: CIG's Cheyenne Compressor Station and its interconnection with Kinder Morgan Interstate Gas Transmission, LLC; a compressor station and the eastern terminus of Wyoming Interstate Co.'s system; the western terminus of Trailblazer Pipeline Co.'s system; and interconnections with the intrastate systems of Public Service Co. of Colorado and Cheyenne Light, Fuel and Power Co.

Part 157, Subpart F of the Commission's regulations.<sup>3</sup> The October 22 Order also preliminarily approved, subject to environmental review, Colorado Interstate Gas Company's (CIG) related proposal to construct and operate compression facilities at the Cheyenne Hub to allow delivery of gas from CIG's system to Cheyenne Plains' proposed system.<sup>4</sup>

2. On November 6, 2003, Cheyenne Plains filed an amendment in Docket No. CP03-302-001 requesting authority, among other things, to modify its proposal by increasing the diameter of the proposed mainline and decreasing the total amount of the compression to be installed at the Cheyenne Hub. We will discuss the November 6, 2003 filing more fully below.

3. We have completed our environmental review of Cheyenne Plains' proposed project, as amended, and CIG's proposed facilities. This order issues the necessary authorizations to Cheyenne Plains and CIG contemplated by the October 22 Order, as amended in Cheyenne Plains November 6 application, as discussed and conditioned below.

## **I. Background**

4. On February 12, 2003, El Paso Corporation formed Cheyenne Plains as a wholly owned subsidiary of El Paso CNG Company incorporated under the laws of the State of Delaware with its principal place of business in Colorado Springs, Colorado. Upon issuance of the certificate authorizations requested by Cheyenne Plains in this proceeding, it will become a natural gas company subject to the Commission's jurisdiction pursuant to Section 2(6) of the Natural Gas Act (NGA).

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<sup>3</sup>Colorado Interstate Gas Co. and Cheyenne Plains Gas Pipeline Co. L.L.C., 105 FERC ¶ 61,095 (2003).

<sup>4</sup>Id.

5. CIG, an affiliate of Cheyenne Plains and a subsidiary of El Paso Corporation, is an interstate pipeline subject to the Commission's jurisdiction. The facilities for which CIG seeks authorization in this proceeding will be used to serve Cheyenne Plains as part of CIG's off-system market.

6. Cheyenne Plains submits that pipeline projects designed to transport increased production from the Central Rocky Mountain area have focused primarily on transporting the gas from the Powder River Basin to the Cheyenne Hub area. Cheyenne Plains has designed its proposed project to provide needed pipeline capacity from the Cheyenne Hub area to existing and underutilized Mid-continent interstate and intrastate pipelines.

## **II. The October 22 Order**

7. In the October 22 Order, the Commission preliminarily approved CIG's proposal in Docket No. CP03-301-000 to install one 2,443-horsepower (hp) jumper compressor within its existing compressor station at its Cheyenne Hub in Weld County, Colorado.

8. The October 22 Order also preliminarily approved Cheyenne Plains' proposal to construct a new 380 mile, 30-inch diameter interstate natural gas pipeline commencing at two points of interconnection with CIG and Wyoming Interstate Company at the existing Cheyenne Hub in Weld County, Colorado and extending southeastward across Colorado and Kansas to a terminus in southwestern Kansas near Greensburg. Cheyenne Plains' proposal includes the construction of three laterals: a 4-mile, 30-inch diameter lateral, a 3-mile, 8-inch diameter lateral, and a 0.20-mile, 20-inch diameter lateral. These laterals will interconnect with CMS Panhandle Eastern Pipeline, Kansas Gas Services Company, and Southern Star Central Gas Pipeline, LLC (SSG), respectively. Cheyenne Plains also proposes to construct interconnects along its mainline with the interstate pipeline systems of Kinder Morgan Interstate Pipeline Company, Natural Gas Pipeline Company of America, ANR Pipeline Company, and Northern Natural Gas Company. The October 22 Order also approved Cheyenne Plains' proposal to construct a 30,930-hp compressor station at the Cheyenne Hub with three Solar Taurus 70 compressor units. In addition, Cheyenne Plains' project included plans to install, pursuant to Section 2.55 of the Commission's regulations, an amine gas treatment plant at the Cheyenne Hub to reduce

the carbon dioxide (CO<sub>2</sub>) content of gas received from CIG and WIC.<sup>5</sup> The proposed pipeline system will be able to provide up to 560,000 Dth per day of firm transportation from the Cheyenne Hub to the cluster of pipelines in the vicinity of Greensburg.

9. Finally, the October 22 Order required Cheyenne Plains to file pro forma tariff sheets within 15 days of the order reflecting revenue crediting mechanisms, revised as directed in the order, and to explain its most favored nations proposal. Cheyenne Plains filed its compliance filing on November 6, 2003. We will discuss the filing below.

### **III. Docket No. CP03-302-001 – Cheyenne Plains’ Amendment**

10. On November 6, 2003, Cheyenne Plains filed, in Docket CP03-302-001, a Petition to Amend the Order Issuing a Preliminary Determination on Non-Environmental Issues. Notice of the filing was published in the Federal Register on February 12, 2004 (69 Fed. Reg. 6957). No additional requests to intervene in the proceeding were filed in response to the notice of the amendment. However, Westport Oil and Gas Company, L.P. (Westport) filed a protest to the proposed amendment with respect to the rate treatment of costs associated with the planned amine gas treatment plant to be located at the interconnection with SSG in Kiowa County, Kansas. We will address Westport’s protest below. The Kansas Corporation Commission (KCC) filed comments in support of Cheyenne Plains’ proposed amendment.

#### **A. Facilities**

11. In its amendment, Cheyenne Plains is seeking to modify the originally proposed design of the Cheyenne Plains Project by (1) increasing the diameter of the proposed 380-mile mainline from 30 to 36 inches and (2) decreasing the total amount of compression at the Cheyenne Hub. Cheyenne Plains proposes to install two rather than three Solar Taurus 70 compressor units and physically derate the two units through control system

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<sup>5</sup>Section 2.55 of the Commission’s regulations provides for the installation of certain facilities which are auxiliary or appurtenant to an authorized or proposed pipeline system and are to be used only to obtain more efficient or economical operation of the authorized or proposed system

modifications from a total of 13,248 site-rated hp to 11,339 site-rated hp consistent with the reduced compression requirement. Cheyenne Plains states that these modifications will not change the 560,000 Dth per day project design capacity originally proposed.

12. Cheyenne Plains states that it is proposing to modify its original proposal because it received a commitment for 170,000 Dth/d of expansion capacity from a single shipper in its August 2003 open season. By increasing the proposed pipe diameter and decreasing the proposed horsepower, Cheyenne Plains states, it can construct and place its system into service as soon as possible to accommodate the 14 original shippers while allowing for a relatively simple future expansion for the new shipper. Cheyenne Plains states that the proposed modifications to its proposal will allow for the future expansion of its system, through the addition of compression, up to a capacity of approximately 1.7 Bcf/d with a minimum of environmental and landowner impacts.

13. Cheyenne Plains initially proposed to construct, pursuant to Section 2.55 of the Commission's regulations, one single-train amine gas treatment facility to reduce the carbon dioxide (CO<sub>2</sub>) content of gas received from CIG and WIC from a maximum of three percent CO<sub>2</sub> content to a maximum of two percent to meet the tariff specifications of all but one of the Cheyenne Plains' interconnecting pipelines. The exception is SSG which has a one percent CO<sub>2</sub> specification. Since subsequent negotiations between Cheyenne Plains and SSG for a waiver of SSG's one percent CO<sub>2</sub> requirement have been unsuccessful, Cheyenne Plains states that it requires a second single-train amine gas treatment plant at the SSG interconnect. Cheyenne Plains believes the earliest the second plant can be placed into service is late in the first year of operation. Nevertheless, Cheyenne Plains states, it will be able to reduce the CO<sub>2</sub> content in the natural gas stream to SSG's required one percent for the first year of operation with only one amine plant since the natural gas received from CIG and WIC during that time will have a CO<sub>2</sub> content below three percent. However, the CO<sub>2</sub> content in the natural gas inlet stream from CIG and WIC will gradually increase as the percentage of gas from certain production areas with high CO<sub>2</sub> content increases, gradually approaching CIG's and WIC's three percent tariff maximums. By that time, Cheyenne Plains states, the proposed second amine plant should be in service.

14. After consulting with the Colorado air permitting agency for the proposed amine plant at the Cheyenne Hub, Cheyenne Plains states, it will install a hydrogen sulfide emissions reduction equipment at the plant to meet air emission requirements for that location. Cheyenne Plains states that it will install the equipment pursuant to Section 2.55(a) of the Commission's regulations.

15. Cheyenne Plains states that the larger diameter pipeline, the installation of the second amine treatment plant, and the additional emission reduction equipment contemplated in its amendment will increase the net cost of the project by an estimated \$78.3 million, after the reduction in cost associated with the reduction of compression at the Cheyenne Hub. This will increase the cost of the project from approximately \$331.8 million to approximately \$410.1 million.

### **B. Rates**

16. Cheyenne Plains states that the increase in project cost coupled with the impact on rates as a result of requirements in the preliminary determination will increase the recourse rate from \$0.3609/Dth to \$0.3949/Dth. However, Cheyenne Plains states, its existing shippers will not be harmed by the rate increase because they all have negotiated rate agreements with the pipeline.

### **C. Fuel Rates**

17. Cheyenne Plains' proposed fuel reimbursement percentage of 1.13 percent includes four components: (1) the fuel used in the operation of the two compressors at the Cheyenne Hub; (2) the fuel used by CIG for the jumper compression service it will provide to Cheyenne Plains including a Lost and Unaccounted For Gas (L&U) component as required in the preliminary determination; (3) the fuel used by the first amine processing plant; and (4) the fuel attributable to the electric commodity costs of the amine plant facilities.

18. Cheyenne Plains believes all four components in the fuel reimbursement charge should be born equally by all shippers since all facilities are integral to overall operations, and the system would not have been built as proposed but for all subscribed gas quantities. Cheyenne Plains requests the Commission to review the tariff provision addressing fuel reimbursement, since the fuel collection has been a subject of discussion in protests filed in this proceeding and at the August 27, 2003 technical conference.

## **IV. Discussion**

19. Since the certificate applications pertain to facilities to be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of Section 7 of the NGA.

**A. Docket No. CP03-302-001**

20. We will approve Cheyenne Plains' proposal to modify its project by increasing the diameter of the proposed mainline to 36-inches and by reducing compression by installing two rather than three compressor units and downrating the two units. The Cheyenne Plains Project shippers will not be adversely affected by the proposed modifications of the project design. Although the modifications will increase the proposed recourse rate, the project shippers' rates will not be affected since they all have elected to pay negotiated rates for their services. Cheyenne Plains will thus bear the risk of any underrecovery of the increased costs. The modifications will not alter the shippers' terms and conditions of service nor delay the proposed in-service date of the facilities. Although the firm year-round capacity of Cheyenne Plains' proposed pipeline will not increase from the originally proposed 560,000 Dth/d, the design changes will result in additional capacity in the winter months. By installing the larger diameter pipeline, Cheyenne Plains will provide for relatively low-cost expansibility of its system up to a capacity of approximately 1.7 Bcf/d through the addition of compression with a minimum of environmental and landowner impacts. For these reasons, we find that the proposed modifications are in the public convenience and necessity.

**B. Rate Issues****1. Cheyenne Plains' Amended Proposal****a. Amine Gas Treatment Facilities at SSG Interconnect**

21. As explained above, Cheyenne Plains' efforts to negotiate a waiver of SSG's one percent CO<sub>2</sub> gas tariff specification were unsuccessful. Accordingly, Cheyenne Plains must construct a second amine plant located at the SSG interconnect. However, the second amine plant will not be in-service until late in Cheyenne Plains' first year of operation. Because the costs of the second amine plant will not be "known and measurable" at the time Cheyenne Plains files its initial rates, we direct Cheyenne Plains

to remove the \$10,611,400 in projected costs for the second plant, and adjust its cost of service and tariff rates, accordingly. Cheyenne Plains is amenable to this approach and will forego the inclusion of the second plant in its recourse rates until it files a rate case.<sup>6</sup>

22. Westport objects to the inclusion of the SSG plant costs in the instant proposal, arguing that the second amine plant is needed solely to satisfy SSG's gas tariff quality standards, does not benefit Cheyenne Plains' proposed system as a whole, and should be accorded the same treatment as incremental facilities that are added to an existing pipeline system to serve "distinct incremental shippers."<sup>7</sup>

23. We find that Westport's request for incremental pricing of the second plant is without merit. The SSG interconnection on Cheyenne Plains' mainline is just as critical to the system as the other interconnecting points and delivery laterals. Several of the 14 initial shippers designated the SSG interconnect as their primary delivery point. Further, the SSG delivery point may be used on a secondary basis thus maximizing shipper flexibility on the system. The increased throughput attributable to the SSG interconnect results in lower recourse rates, by which Westport and all Cheyenne Plains shippers benefited when negotiating contract rates. Accordingly, we will deny Westport's protest.

#### **b. Recourse Rates**

24. The October 22 Order preliminarily granted Cheyenne Plains' request for negotiated rate authority. In the amended proposal, Cheyenne Plains maintains the use of the straight fixed variable method to design its recourse rates with a reservation rate covering fixed costs and a commodity rate covering variable costs. Other than Fuel Use and L&U, discussed below, most of Cheyenne Plains' costs are fixed costs. The amended proposal (adding the larger diameter pipeline, the installation of the second amine treatment plant, and the additional emission-related costs at the Cheyenne Hub) increases the overall initial project costs by an estimated \$78.3 million, from \$331.8 to

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<sup>6</sup>See Exhibit N (Tab 2) at page 13, footnote 7.

<sup>7</sup>Citing 18 C.F.R. § 284.10(c)(4) of the Commission's regulations that cost allocation follows cost incurrence and the Commission's Certification of New Gas Pipeline Facilities, 88 FERC ¶ 61,227 at 61,745 (1999), clarified, 90 FERC ¶ 61,128 (2000).



\$410.1 million. Based upon the projected first year revenue requirements of \$80,720,114 and the system design capacity of 560,000 Dth per day, the increased project costs result in an increase in the proposed recourse rate from \$0.3609 per Dth to \$0.3949 Dth when expressed on a 100 percent load factor basis. Because we are requiring Cheyenne Plains to remove the costs associated with the second amine plant, the recourse rates are overstated and must be recalculated based on the findings in this order.

25. In the instant filing, Cheyenne Plains proposes a commodity rate of \$0.0010 per Dth which reflects variable costs (such as lubricants and desiccants) which make up \$195,842 of the \$80.7 million total annual cost of service. Because the proposed commodity rate may include variable costs associated with the second amine plant, we are requiring Cheyenne Plains to recalculate the rate to remove any costs related to the second plant, or explain why no variable costs are associated with the gas treatment facility.

### **c. Project Financing and Rate of Return**

26. The October 22 Order required Cheyenne Plains to recalculate its recourse rates based on its parent company's capital structure at 69 percent debt and 31 percent equity, a 14 percent return on equity (ROE), and the actual debt cost incurred to construct the project. Cheyenne Plains' revised proposal complies with this directive except for the actual debt cost which will not be known until permanent financing is obtained.

27. As was true at the time of its initial proposal, Cheyenne Plains' financial arrangements for its revised project remain to be finalized. However, Cheyenne Plains states that the revised project will be funded initially through equity contributed by the owner of Cheyenne Plains up to approximately 30 percent of the total project costs and, thereafter, through debt secured via a construction loan. Upon placing the system in service Cheyenne Plains plans to replace the construction loan with permanent financing. For purposes of this filing, Cheyenne Plains has forecasted a 9 percent debt cost.

28. We accept Cheyenne Plains' revised capital structure and 14 percent ROE since both comply with the requirements of our October 22 Order,<sup>8</sup> as well as the findings in this order. With respect to debt cost, the Commission finds Cheyenne Plains' 9 percent

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<sup>8</sup>October 22 Order at P 50–51.

speculative and without basis. Further, based on current market volatility, the Commission “believes it best” not to base initial rates on projected costs.<sup>9</sup> For these reasons, we reiterate our findings in the October 22 Order and direct Cheyenne Plains to use its actual debt financing costs incurred to construct the project when it files its initial rates 60 days prior to placing the project facilities in service.

**d. Fuel Use and Lost and Unaccounted For Fuel**

29. In the October 22 Order, the Commission deferred its review of this issue, relying on Cheyenne Plains’ September 15, 2003, commitment to provide a full explanation and supporting workpapers regarding the fuel rates in the instant proposal. Exhibit N at page 6 to the instant filing, shows the calculation of the reimbursement percentage based on estimated usage for: the two Taurus 70 compressors, the CIG “jumper” service, the amine processing plant, and fuel quantity attributable to the commodity costs of the electric compression facilities. Only these hub area costs will be initially included in the fuel reimbursement calculation; the facilities at the SSG Interconnect will have an initial cost of zero, and will be included only once those facilities are placed in service and when the reimbursement percentage is recalculated in accordance with section 26 of the tariff General Terms & Conditions (GT&C). The projected fuel use and L&U for gas percentage under the modified project results in a 1.13 percent fuel reimbursement percentage.<sup>10</sup>

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<sup>9</sup>See Kern River Gas Transmission Company, 98 FERC 61,205 at 61,722 (2002).

<sup>10</sup>An L&U of 0.15 percent of receipts is included as an initial estimate. Cheyenne Plains states that this amount is based on the low end of the L&U typically experienced in pipeline operations. This charge will be recomputed annually and adjusted by actual experience.

30. According to Cheyenne Plains, upon the in-service date of the second amine plant at the SSG interconnect, the fuel from the first amine plant at the hub will decrease. However, Cheyenne Plains plans to roll-in the fuel used and L&U at the SSG amine plant which will slightly increase the overall fuel reimbursement calculation from 1.13 percent to 1.14 percent.

31. Westport contends that the incremental fuel that will be used upstream at the amine plant to reduce CO<sub>2</sub> content from the general 2 percent system requirement to SSG's 1 percent requirement could amount to approximately \$700,000 a year of additional costs to shippers who do not need to reduce CO<sub>2</sub> content in order to deliver their gas to markets on Cheyenne Plains.

32. The basis for our denial of Westport's argument for incremental pricing of the SSG amine plant holds true for fuel charges at the amine plants as well. Therefore, we find that Westport's argument that the fuel charges at the SSG amine plant should be treated incrementally is without merit. The SSG plant is integral to the overall system operations, and the Cheyenne Plains project would not be built as proposed but for the subscribed gas quantities requiring the SSG interconnect. Cheyenne Plains' instant proposal with a reduced compression requirement results in a fuel reimbursement percentage reduction from the initially proposed 1.24 percent to 1.13 percent. We find Cheyenne Plains' proposed fuel reimbursement mechanism for both amine plants acceptable. Westport's protest is denied.

## **2. Cheyenne Plains' Compliance Filing Docket No. CP03-302-002**

33. The October 22 Order addressed Cheyenne Plains' pro forma tariff governing the terms and conditions of service on its proposed system. The Commission accepted Cheyenne Plains' creditworthiness standards, backhaul rate, and zero Annual Charge Adjustment for the first full year of service, but required the tariff revisions discussed below affecting a most favored nations clause, unauthorized overrun revenue crediting, and the crediting of interruptible (IT) revenue.

**a. Favored Nations Clause**

34. In its original application, Cheyenne Plains proposed a most favored nations clause for its firm transportation service at section 7 under Rate Schedule FT requiring that,

during the term of the Initial Shippers' TSAs [transportation service agreements], if a future shipper on an expansion of the Cheyenne Plains system enters into a TSA for service from Cheyenne to the Greensburg hub for the same length of service or shorter that has a negotiated or discounted rate that is lower on a 100 percent load factor basis than the Initial Shippers' negotiated rate for its original maximum deliverability quantity, then the Initial Shippers' TSAs will be amended to reflect that lower rate.<sup>11</sup>

35. In the October 22 Order, the Commission stated that most favored nations clauses are acceptable when applicable only to negotiated rates.<sup>12</sup> However, the Commission questioned Cheyenne Plains' inclusion of such language in the tariff and the tariff language barring future expansion shippers on the system from receiving lower negotiated or discounted rates. The October 22 Order required Cheyenne Plains to explain the purpose of the right and why it is part of its generally applicable firm rate schedule. Further, in light of Cheyenne Plains' expansion plans, the order required Cheyenne Plains to explain how this right will apply to expansion shippers, and how it will impact future recourse and negotiated rate shippers on its system.

36. In its November 6 compliance filing, Cheyenne Plains notes that the Commission accepted an agreement in the Gulfstream case that contained a favored nations clause specifying that if the pipeline subsequently offered "more favorable rates" to a second similar shipper, the pipeline would then offer the first shipper the option to receive

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<sup>11</sup>The lower rate only applies to contracts of similar length or shorter for similar service, and applies to expansion shipper rates as well. Rates for capacity release services, discounts at secondary points, or a ROFR right are excluded from this provision.

<sup>12</sup>October 22 Order at P 56, citing Gulfstream Natural Gas System, L.L.C., 100 FERC ¶ 61,036 at P 16 (2002).

service under the more favorable rates. Cheyenne Plains contends that this type of favored nations clause was acceptable since it applied only to the negotiated rate to be paid, and would not result in one shipper receiving a different quality of service from other shippers or adversely affect other shippers.

37. Cheyenne Plains believes that its proposed most favored nations clause is similar to one approved in Gulfstream, which also applied only to the negotiated rate to be paid. The clause, provided at the request of its Initial Shippers, was intended to recognize the shippers' financial contribution to underwriting the project and to protect them against the possibility of similarly situated shippers in a future expansion using Cheyenne Plains' cheap expansibility to receive lower rates. Moreover, Cheyenne Plains claims that the favored nations clause it proposed will not result in one shipper receiving a different quality of service from other shippers or adversely affect other shippers.

38. Further, in its compliance filing, Cheyenne Plains cites to similar proceedings where the Commission rejected proposals that required pipelines to add a most favored nations clause or other types of discount provisions to the generally applicable tariff, but determined that parties could agree to include such clauses in individual service contracts.<sup>13</sup> Cheyenne Plains states that it included the provision in its tariff rather than in the TSA, such that the provision would not constitute a non-conforming contract provision under the Commission's material deviation policy. Therefore, Cheyenne Plains proposes to revise section 7 under its Rate Schedule FT (on pro forma Sheet No. 107) to remove the favored nations clause, and plans to place the clause in the Initial Shippers' individual TSAs, which TSAs will be filed with the Commission at least 30 days prior to the in-service date of the facilities. Lastly, Cheyenne Plains notes that it offered its potential future expansion shipper the same favored nations clause offered to its anchor shippers.

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<sup>13</sup>Citing Gulfstream Natural Gas System, L.L.C. (Gulfstream), 100 FERC ¶ 61,036 (2002); see also Southern Natural Gas Co., 64 FERC ¶ 61,274 (1993); Columbia Gas Transmission Corp., 101 FERC ¶ 61,337 (2002); Colorado Interstate Gas Co., 101 FERC ¶ 61,268 (2002); and Georgia Strait Crossing Pipeline LP, (Georgia Strait) 100 FERC ¶ 61,280 (2002).

39. The Commission has accepted TSAs with terms that differ materially from a pipeline's tariff when it is assured that doing so will not adversely affect the quality of service received by any shippers.<sup>14</sup> We find Cheyenne Plains' removal of the most favored nations clause language from its tariff consistent with Commission findings in similar pipeline proceedings.<sup>15</sup> Therefore, we will permit Cheyenne Plains to modify the most favored nations clause in its TSAs such that any option afforded its negotiated shippers to amend the TSAs is limited to revising its rates, and is only applicable in the event the pipeline provides comparable service to a similarly situated shipper at rates below the negotiated shipper's rates.<sup>16</sup> The Commission has found this type of most favored nations clause to be acceptable, since it is applicable only to the negotiated shipper's rate under the TSA, will not provide the anchor shippers with a different quality of service from future expansion shippers, and will not adversely affect other shippers on the system.<sup>17</sup>

#### **b. Unauthorized Overrun Revenue Crediting**

40. The October 22 Order found that Cheyenne Plains' proposed crediting of penalty revenues, less net costs, is consistent with Commission policy, with one exception. The October 22 Order required Cheyenne Plains' to credit both its firm and interruptible shippers, rather than firm shippers only, as it had proposed. In its compliance filing, Cheyenne Plains revises GT&C section 22.6 (on pro forma Sheet No. 268) to credit both firm and interruptible shippers all unauthorized overrun penalty revenue received from each shipper during the year. Further, the crediting mechanism is clarified to state that unauthorized overrun revenues from both firm and interruptible services will be subject to crediting, as well. We accept Cheyenne Plains' revisions to its unauthorized overrun revenue provisions consistent with the October 22 Order. However, the penalty revenue

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<sup>14</sup>See e.g., *Gulfstream*, 100 FERC ¶ 61,036 (2002).

<sup>15</sup>See supra at n. 13.

<sup>16</sup>*Georgia Strait*, 100 FERC at 62,194. See also, *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,337 at 62,392 (2002).

<sup>17</sup>See, e.g., *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,268 at P 17 (2002).

crediting mechanism must exclude offending shippers from receiving penalty revenue refunds.<sup>18</sup> In addition, unless Cheyenne Plains and the negotiated rate shipper agreed to a penalty revenue crediting mechanism in the TSA, the crediting mechanism must also exclude negotiated rate customers. Cheyenne Plains is required to revise its tariff, accordingly. All conditions in the October 22 Order with regard to the pricing index used by Cheyenne Plains to determine the credit remains subject to scrutiny for compliance with the Commission's recent Policy Statement in Price Discovery in Natural Gas and Electric Markets in Docket No. PL03-3-000.<sup>19</sup>

### **c. Interruptible Revenue Crediting**

41. The October 22 Order required Cheyenne Plains to file a fully supported proposal regarding any IT revenue sharing aspects and explain how our policies concerning revenue crediting apply to a pipeline that, at present, expects to have only negotiated rate customers. In its compliance filing, Cheyenne Plains cites to Horizon Pipeline Company, L.L.C. (Horizon), where the Commission directed a similar negotiated rate pipeline to comply with the Commission's cost-based rates policy.<sup>20</sup> Horizon, like Cheyenne Plains, expected most if not all of its volumes to flow under firm service agreements; however, in response to the Commission's requirements, Horizon allocated a representative amount of IT volumes (5,000 Dth per day out of a 380,000 Dth per day) in its proposed recourse rate design. The Commission accepted Horizon's proposal to retain all of its IT revenue since it had allocated costs to the service while its negotiated rate shippers received none of the benefit. By allocating costs to IT service, Horizon lowered its firm recourse rate, which did not provide any reduction in cost to its negotiated rate shippers, and removed the possibility of these shippers receiving additional revenue through IT crediting.

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<sup>18</sup>See Great Lakes Gas Transmission Limited Partnership, 105 FERC ¶ 61,129 at 61,689-90 (2003) citing Columbia Gulf Transmission Co., 100 FERC ¶ 61,344 (2002) and Algonquin Gas Transmission Co., 98 FERC ¶ 61,211 (2002).

<sup>19</sup>103 FERC ¶ 61,121 (2003).

<sup>20</sup>Horizon Pipeline Co., 92 FERC ¶ 61,205 (2000).

42. Cheyenne Plains believes its proposal to equally share any IT revenues provides greater benefits to its negotiated rate shippers than those required under current Commission policy. Specifically, revised GT&C section 20.4 (on pro forma Sheet No. 255) reflects a 50 percent credit by Cheyenne Plains of all applicable IT revenues to all firm transportation shippers. Cheyenne Plains avers that its proposal provides the appropriate balance between (i) the limited rights of its negotiated rate shippers; (ii) Cheyenne Plains' risks with regard to the construction, financing and operation of the project; and (iii) the Commission's cost-based rates policy. However, in response to the Kansas Corporation Commission's comments to the initial proposal, Cheyenne Plains proposes to split IT revenues on a 50/50 basis, net of variable costs, with crediting to all firm shippers, including negotiated rate shippers, until the issue can be revisited in Cheyenne Plains' three-year rate review after actual operating experience.

43. The Commission finds Cheyenne Plains' 50/50 IT crediting mechanism unacceptable. Similar to our findings with respect to Cheyenne Plains' penalty revenue mechanism discussed supra, unless Cheyenne Plains and the negotiated rate shipper agreed to an IT revenue crediting mechanism in the TSA, the negotiated rate shipper is not entitled to the credit. Further, consistent with our policy, we require Cheyenne Plains to revise its crediting mechanism to credit 100 percent of the revenues accrued, net of costs incurred, to provide the service. Because none of the negotiated rate shippers on Cheyenne Plains' system are entitled to a revenue credit, Cheyenne Plains must accrue any net revenues generated by IT service it provides, and apply such credits to its cost of service when it files either to change its rates or files its three-year rate review.

44. Indicated Shippers filed a motion for clarification concerning whether Cheyenne Plains' proposed IT revenue-crediting mechanism would include short-term firm transportation (FT) revenues. The Indicated Shippers request that the revenue-crediting mechanism include the revenues Cheyenne Plains receives from short-term FT, as well as IT, because neither IT nor short-term FT have been included in the billing determinants used to calculate the underlying rate.<sup>21</sup> Indicated Shippers contend that, without this clarification, Cheyenne Plains could sell all of its excess capacity as short-term FT and

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<sup>21</sup>Citing Tennessee Gas Pipeline Co., 66 FERC ¶ 61,317 at 61,996 (1994). See also CenterPoint Energy Gas Transmission Co., 102 FERC ¶ 61,059, order on reh'g, 103 FERC ¶ 61,228 (2003).



circumvent the revenue crediting obligation. Moreover, given that no test period data exists and no history is available to determine the potential usage of short-term FT, Indicated Shippers submits that the Commission should require Cheyenne Plains to include revenues from short-term FT in the revenue-crediting mechanism.

45. Cheyenne Plains indicates that there is the potential for short-term firm capacity in the winter. Therefore, we agree with Indicated Shippers that because Cheyenne Plains does not project any volumes for such service, any revenues received by Cheyenne Plains would be a windfall and would reduce interruptible revenues subject to crediting. We will not permit Cheyenne Plains to circumvent the requirement for revenue crediting. For this reason, the Commission requires that any revenues from any short-term firm services provided by Cheyenne Plains be considered interruptible revenues and subject to Cheyenne Plains IT revenue crediting mechanism, subject to the revisions mandated supra. This finding is consistent with our precedent in Tennessee. Cheyenne Plains must revise GT&C section 20.4, accordingly.

## **B. Environmental Review**

### **1. Commission's NEPA Pre-filing Process**

46. On January 13, 2003, El Paso Corporation (El Paso) (parent of Cheyenne Plains) submitted a request to use the Commission's National Environmental Policy Act (NEPA) Pre-Filing Process. On January 24, 2003, the Director of the Office of Energy Projects accepted El Paso's request. Commission staff subsequently attended many of El Paso's sponsored public open houses, and held four interagency meetings with participating Federal, State, and local agencies. The Commission issued a Notice of Pre-filing Environmental Review for the project on March 14, 2003, which indicated staff's intention to prepare an Environmental Impact Statement (EIS), and opened the public scoping period for the project. After the initial Commission staff review of Cheyenne Plains' draft application and environmental resource reports, Cheyenne Plains finalized its Certificate application and filed it with the Secretary of the Commission on May 20, 2003.

47. On July 30, 2003, Cheyenne Plains filed a letter of intent to potentially amend the project to increase the pipe diameter from 30 inches to 36 inches, and reduce the amount of compression, due to shipper interest and Cheyenne Plains' decision to hold another open season. On November 6, 2003, Cheyenne Plains filed an amendment for these modifications.

## **2. Cooperating Agencies**

48. The U.S. Forest Service, Pawnee National Grassland (USFS) and the U.S. Fish and Wildlife Service (FWS) both participated as cooperating agencies in the preparation of the EIS. The USFS assisted the Commission staff with scoping, public review and comment, alternative development, and the analysis of the impacts and effects of the alternatives that were analyzed in detail.

49. The FWS' involvement with the preparation of the EIS was limited to the scoping and review of the projects' effects pursuant to Section 7 of the Endangered Species Act, although the agency did identify other fish and wildlife concerns early in the process. Based on the consultation efforts of the Commission staff and the USFS, a Biological Assessment (BA) was prepared in cooperation with the FWS' Field Offices in Colorado and Kansas.

## **3. EIS Review**

50. On October 17, 2003, the Commission issued a draft Environmental Impact Statement (EIS) for the proposed Cheyenne Plains Pipeline Project. Because we were made aware of Cheyenne Plains' potential change in project scope in July, we evaluated the 30-inch-diameter proposal together with a 36-inch-diameter pipeline alternative with a reduced compression scenario in the alternatives section (draft EIS, section 4.2.2). Copies of the draft EIS were sent to interested parties including Federal, State, county, local agencies; Native American tribes; elected officials; local newspapers and libraries; landowners; and intervenors.

51. Although the Land and Resource Management Plan (LRMP) for the Arapahoe and Roosevelt National Forests (ARNF) and Pawnee National Grassland (PNG) does not require alternative route analysis for proposals that would use designated utility corridors, we considered an alternative that would avoid the PNG by routing it to the north of the Grassland boundary. However, this alternative would be 6 miles longer and would impact the Colorado Natural Heritage Program's Eagle Rock at Chalk Bluffs Potential Conservation Area. Because this alternative would create a new disturbance corridor, and have more negative environmental effects than the proposed route through the PNG, we eliminated this alternative from further consideration. In addition, the proposed route through the PNG is located in a Forest Plan Designated Utility Corridor. This route is consistent with the LRMP for the ARNF and PNG.

52. The EIS addressed: soil and geology; groundwater and surface water; wildlife and vegetation; endangered and threatened species; land use, recreation, and visual resources; cultural resources; socioeconomics; air and noise quality; reliability and safety; cumulative impacts; and alternatives to the proposed route and aboveground facilities.

53. Our BA analyzed impacts to 10 Federally listed species that potentially occur in the project area. The BA discussion was included in the text of section 3.6.1 of the draft EIS. On November 20, 2003, the Department of Interior, Office of the Secretary filed comments on the BA and the draft EIS. In its letter, the Office of the Secretary stated that “based on the review of the BA, the FWS advises that they concur with FERC’s determinations of effect for all 10 listed species discussed in the BA and the draft EIS.”

54. Based on comments received during the public comment period on the draft EIS in November 2003, and Cheyenne Plains’ amendment to increase its mainline diameter from 30 to 36 inches and reduce the amount of compression proposed, the Commission revised the EIS and issued the final EIS on February 27, 2004. Copies of the final EIS were sent to the same environmental mailing list as the draft EIS.

55. The final EIS concludes that, if the project is constructed as modified and with the appropriate mitigation measures as recommended, it would have limited adverse environmental impact. As part of the analysis in the final EIS, specific mitigation measures were developed for the construction and operation of the proposed facilities, including a program of environmental inspection and monitoring that is designed to reduce the impacts of construction of the project and ensure compliance with Certificate, USFS Special Authorization, and permit requirements. The final EIS concludes that these measures will substantially reduce any environmental impact and finds that if the project is constructed and operated in accordance with the mitigation measures, it will be an environmentally acceptable action. The Commission adopts the findings and conclusion of the final EIS.

56. Any State or local permits issued with respect to the expansion facilities described herein and in the application and as supplemented in the amendment, must be consistent with the conditions of Cheyenne Plains’ and CIG’s authorizations. 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 authorized by this Commission. Cheyenne Plains and CIG shall notify the Commission’s

environmental staff by telephone or facsimile of any environmental noncompliance by other Federal, State, or local agencies on the same day that such agency notifies Cheyenne Plains and CIG. Cheyenne Plains and CIG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

#### **4. USFS Record of Decision**

57. On February 18, 2004, the Rocky Mountain Deputy Regional Forester approved the Record of Decision (ROD) for the Cheyenne Plains Pipeline Project. The ROD authorizes the issuance of a Special Use Authorization that is subject to the terms and conditions of the Department of Agriculture's and the FERC's regulations for the construction, operation, and maintenance of that portion of the Cheyenne Plains pipeline that crosses parts of the Pawnee National Grassland on the proposed pipeline route recommended by the FERC staff in the EIS. On February 27, 2004, the USFS issued a Notice of Decision for the project, which allows a 45-day public appeal process, pursuant to 36 CFR 215 (June 2003).

#### **5. Late Motion to Intervene**

58. On March 12, 2004, Forest Guardians and Center for Native Ecosystems (Forest Guardians) filed a late motion to intervene in this proceeding. Forest Guardians state that they are seeking this late intervention because, they believe, the final EIS did not adequately address the environmental concerns they raised in their comments to the draft EIS. Forest Guardians state that they do not wish to raise issues on subjects other than those already considered in the environmental impact statements and related environmental reports. Since granting the late motion to intervene will not disrupt this proceeding or prejudice existing parties, and for good cause shown, we will grant Forest Guardians' late motion to intervene.

59. The final EIS addresses the Forest Guardians' comments to the draft EIS in Appendix J, responses CO1-1 through CO1-31. The responses address the various aspects of Forest Guardians' concerns that the Cheyenne Plains project would adversely affect prairie grassland ecosystems; the Pawnee National Grassland; and State and Federally-listed species, particularly the black-tailed prairie dog, swift fox, ferruginous hawk, and the lesser prairie chicken. We believe that the final EIS adequately addresses the Forest Guardians' comments to the draft EIS.

### **C. Conclusion**

60. Having previously made preliminary findings based on non-environmental issues relating to Cheyenne Plains' and CIG's applications, and having now completed the environmental review of the proposals, as amended, the Commission has completed its phased review of the proposals in those applications. We find, subject to acceptance of the conditions set forth below, that the benefits of the proposals will outweigh any potential adverse effects, and therefore will be consistent with our September 15, 1999 Policy Statement on pipeline construction and Section 7 of the NGA. Accordingly, we are making final determinations that the public convenience and necessity require granting the requested authorizations to Cheyenne Plains and CIG, as discussed above. This order incorporates the findings with respect to the non-environmental issues contained in the October 22, 2003 Order and constitutes our final decision on Cheyenne Plains' and CIG's requests for authorization under Section 7 of the NGA.

61. At a hearing held on March 24, 2004, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

#### The Commission orders:

(A) Certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act are issued to Cheyenne Plains in Docket Nos. CP03-302-000 and CP03-302-001, and to CIG in Docket No. CP03-301-000 to construct, own, operate and maintain natural gas facilities, as described and conditioned herein and in the October 22, 2003 preliminary determination, and as more fully described in the applications, as amended.

(B) The certificate authorizations issued in Ordering Paragraph (A) are conditioned on the following, as applicable:

(1) Cheyenne Plains' and CIG's completing the authorized construction within two years of the issuance of this order;

(2) Cheyenne Plains' and CIG's complying with with Part 157 of the Commission's regulations especially paragraphs (a), (c), (e), and (f) of Section 157.20, and Parts 154 and 284 of the Commission's regulations.

(3) Cheyenne Plains must file actual tariff sheets 60 days prior to placing the facilities in service to bring its tariff in compliance with the revisions specified in the preliminary determination and this order.

(4) Cheyenne Plains must recalculate its initial recourse rates, as discussed in the body of this order, and file such revised rates at least 60 days prior to placing its new pipeline facilities in service;

(5) Cheyenne Plains shall make a filing within three years after its in-service date, either justifying its existing recourse rates or proposing alternative rates;

(C) Cheyenne Plains' request for negotiated rate authority is approved. Cheyenne Plains shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates.

(D) Cheyenne Plains shall adhere to the AFUDC accounting requirements as required in the October 22, 2003 preliminary determination.

(E) Cheyenne Plains and CIG shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance by other Federal, State, or local agencies on the same day that such agency notifies Cheyenne Plains and CIG. Cheyenne Plains and CIG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) A certificate of public convenience and necessity is issued to Cheyenne Plains in Docket No. CP03-303-000 for a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.

(G) A certificate of public convenience and necessity is issued to Cheyenne Plains in Docket No. CP03-304-000 for a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations.

(H) Forest Guardians' late motion to intervene is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

## APPENDIX

### Environmental Conditions

#### Measures Applicable to Cheyenne Plains and CIG:

1. Cheyenne Plains and CIG shall follow the construction procedures and mitigation measures described in their applications, supplemental filings (including responses to staff data requests), and as identified in the environmental impact statement (EIS), unless modified by this Order. Cheyenne Plains and CIG 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 delegation 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 and CIG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets and shall include the staff's recommended facility locations.



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

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

5. Cheyenne Plains and CIG 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 route variations recommended herein 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. **At least 60 days before the anticipated start of construction**, Cheyenne Plains and CIG shall file an initial Implementation Plan with the Secretary for the review and written approval of the Director of OEP describing how Cheyenne Plains and CIG will implement the mitigation measures required by this Order. Cheyenne Plains and CIG must file revisions to the plan as schedules change. The plan shall identify:
  - a. how Cheyenne Plains and CIG 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;
  - b. the number of EIs assigned per spread and aboveground facility site, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;
  - d. what training and instructions Cheyenne Plains and CIG will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - e. the company personnel (if known) and specific portion of Cheyenne Plains' and CIG's organizations having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Cheyenne Plains and CIG will follow if noncompliance occurs; and
  - g. 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 mitigation training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. The Implementation Plan shall specify that a team of two or more EIs will be assigned to each construction spread. The Implementation Plan shall also identify the individuals selected for the EI positions and include their qualifications and experience. If the Director of OEP finds that the environmental inspection plan is not sufficient, the Director will either require a change in the number of EIs or individual personnel, or require that Cheyenne Plains and CIG implement a Third-Party Compliance Monitoring Program for the project.

8. Cheyenne Plains and CIG shall file updated status reports with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration, 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. the current 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;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Federal Energy Regulatory Commission (FERC or Commission) and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Cheyenne Plains and CIG from other Federal, State, or local permitting agencies concerning instances of noncompliance, and Cheyenne Plains' and CIG's response.
9. Cheyenne Plains and CIG must receive written authorization from the Director of OEP **before commencing service for each component of the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Cheyenne Plains and CIG shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Cheyenne Plains and CIG has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

**Measures Applicable to Cheyenne Plains Only:**

11. Cheyenne Plains shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Before construction**, Cheyenne Plains shall mail the environmental complaint resolution procedure to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, Cheyenne Plains shall:
    - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon to expect a response;
    - ii. instruct the landowners that, if they are not satisfied with the response, they should call Cheyenne Plains' Hotline; the letter should indicate how soon to expect a response; and
    - iii. instruct the landowners that, if they are still not satisfied with the response from Cheyenne Plains' Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  - b. In addition, Cheyenne Plains shall include in its weekly status report a table that contains the following information for each problem/concern:
    - i. the date of the call;
    - ii. the identification number from the certificated alignment sheets of the affected property;
    - iii. a description of the problem/concern; and
    - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. Cheyenne Plains shall prepare, in consultation with the Pawnee National Grassland (PNG) staff, an Unanticipated Discovery Plan for Paleontological Resources to be implemented during construction. The plan, and documentation of PNG approval of the plan, shall be filed with the Secretary **before construction**.

13. Cheyenne Plains shall file a revised Environmental Construction Plan (ECP) that incorporates our conclusions regarding the variances in tables 3.2.2-1, 3.3.2-2, and 3.4.2-2 of the EIS with the Secretary for the review and written approval of the Director of OEP **before construction**.
14. Cheyenne Plains shall include in its revised ECP the Natural Resources Conservation Service's (NRCS) recommendation to avoid the use of hay or straw bales as sediment barriers. The ECP shall state that properly installed silt fence is the required erosion control measure.
15. Cheyenne Plains shall develop a contingency plan that includes measures to control dust and minimize wind erosion in areas where water availability is limited. In addition to protection of the topsoil pile in areas where trenchline-only topsoil stripping is conducted, the plan shall address protection of the topsoil pile in all areas where topsoil may be stripped (i.e., from the full right-of-way or the trench and subsoil storage area). The plan shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.
16. Cheyenne Plains shall file the location and crossing method for each irrigation canal that would be crossed by the pipeline with the Secretary **before construction**.
17. Cheyenne Plains shall include in its revised ECP a measure requiring that herbaceous vegetation in prairie and shrub land areas be left intact on the construction work area where grading is not required and skimming for wildfire management is not conducted.
18. Cheyenne Plains shall include in its revised ECP a measure requiring the use of a grass drill designed for precision planting of native grass seeds in all areas unless steep slopes or other physical conditions of the substrate require an alternate method of seed application.
19. Cheyenne Plains shall include in its revised ECP a measure requiring that all disturbed non-agricultural areas be seeded unless otherwise recommended in writing by the land management agency or landowner.
20. Cheyenne Plains shall include in its revised ECP the final mulching specifications for the project. Documentation of the NRCS' approval of the final mulching specifications shall be filed with the Secretary **before construction**.

21. Cheyenne Plains shall consult with the Colorado Natural Heritage Program (CNHP) to identify any concerns regarding the project crossing CNHP Natural Vegetation Communities and potential conservation sites and develop site-specific mitigation measures for any vegetation communities of special concern that would be crossed. The results of these consultations and any revised construction plans shall be filed with the Secretary **before construction**.
22. Cheyenne Plains shall prepare a noxious weed control plan in consultation with land management agencies and local weed coordinators. The plan shall include:
  - a. the results of Cheyenne Plains' noxious weed surveys, which shall list by milepost the noxious weeds identified within the entire construction work area including along the pipeline route, and at aboveground facility sites, off-right-of-way yards, and access roads;
  - b. additional details regarding Cheyenne Plains' proposed treatment of existing weed infestations and infestations that occur following construction, including a discussion of all proposed control methods and the criteria used to determine which method would be employed;
  - c. a description of the specific measures Cheyenne Plains would implement to reduce the spread of noxious weeds during construction;
  - d. a list of herbicides proposed to be used, herbicide application methods, and worker safety procedures proposed to prevent impacts on human health and the environment; and
  - e. a provision banning herbicide use in areas with suitable habitat for threatened plant species, a list by milepost of these areas of suitable habitat, and a statement that noxious weeds shall be controlled by manual means in these areas.

The noxious weed control plan, and documentation of land management agency and local weed coordinator approval of the plan, shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.

23. Cheyenne Plains shall employ a qualified biological monitor on each construction spread to be responsible for oversight of conservation measures pertaining to special status species. Alternatively, at least one of the EIs on each construction spread shall be a qualified biological monitor.
24. Cheyenne Plains shall conduct preconstruction surveys at the South Platte and Arkansas Rivers for least terns and piping plovers within 2 weeks before beginning construction across these waterbodies. If nesting or chick-raising

individuals are noted during these surveys, Cheyenne Plains shall delay construction within 0.25 mile of the waterbody until young are fledged or otherwise able to avoid construction activities.

25. Cheyenne Plains shall store and stage all equipment outside of the riparian area adjacent to the Arkansas River except as needed during the actual construction of the crossing. In addition, Cheyenne Plains shall coordinate with the FWS to develop a revegetation plan for the riparian area that includes the use of native, riparian vegetation species. The revegetation plan, and FWS approval of the plan, shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.
26. In areas identified as suitable habitat for the Colorado butterfly plant and Ute ladies'-tresses, Cheyenne Plains shall follow FWS-recommended survey guidelines, including survey frequency and timelines, and post-survey reporting requirements. If individuals of these species are identified during surveys, Cheyenne Plains shall realign its pipeline to avoid the known individuals/populations. Avoidance could also include the use of the horizontal boring method. If avoidance is not possible, Cheyenne Plains shall develop a mitigation plan that includes the site-specific locations by milepost and addresses the measures below. Cheyenne Plains shall:
  - a. restore disturbed areas to preconstruction condition following construction;
  - b. implement FWS-recommended conservation measures relating to rosette and seed collection and replanting;
  - c. develop a monitoring plan in coordination with the FWS that assesses post-construction restoration success; and
  - d. set aside topsoil in areas where suitable habitat exists for the Ute ladies'-tresses to be replaced when construction is complete.

The survey results and correspondence pertaining to these species, including FWS approval of the monitoring plan, shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.

27. Cheyenne Plains shall conduct preconstruction surveys of prairie dog colonies identified in Colorado to determine if burrowing owls are nesting in these areas. If active burrowing owl nests are identified on the U.S. Department of Agriculture, Forest Service-(USFS) managed portion of the PNG, Cheyenne Plains shall coordinate with the USFS to develop conservation measures. If active burrowing owl nests are identified on other portions of the route during surveys, conservation measures already proposed for other active nests shall be implemented. The

survey results, conservation measures, and correspondence with the USFS, including recommendations and approvals, shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction.**

28. Cheyenne Plains shall conduct preconstruction surveys in suitable habitat on the PNG for the prairie moonwort and sandhill goosefoot and coordinate with the USFS to develop conservation measures to reduce or minimize potential impacts on these species if they are identified during surveys. The survey results, conservation measures, and correspondence with the USFS, including recommendations and approvals, shall be filed with the Secretary **before construction.**
29. Cheyenne Plains shall coordinate with the Kansas Department of Wildlife and Parks (KDWP) to develop conservation measures to minimize impacts on denning eastern spotted skunks. The conservation measures and correspondence with the KDWP shall be filed with the Secretary **before construction.**
30. Cheyenne Plains shall not begin construction activities **until:**
  - a. Cheyenne Plains completes any outstanding species-specific surveys and the FERC receives comments from the FWS regarding the preconstruction survey reports;
  - b. the FERC completes consultation with the FWS;
  - c. Cheyenne Plains completes and files with the Secretary the results of consultations with the USFS regarding measures to avoid or minimize impacts on special status species on the PNG;
  - d. Cheyenne Plains completes and files with the Secretary the results of consultations with the Colorado Department of Natural Resources, Division of Wildlife and the KDWP regarding measures to avoid or minimize impacts on special status species in Colorado and Kansas; and
  - e. Cheyenne Plains receives written notification from the Director of OEP that construction and/or implementation of conservation measures may begin.



31. Cheyenne Plains shall employ a qualified archaeological monitor to inspect the open trench during construction in the following locations:

<b>State/Facility</b>	<b>Mileposts</b>		
<b>COLORADO</b>			
<b>Mainline</b>	7.19 to 14.94	29.56 to 39.16	54.64 to 96.44
	126.20 to 144.92	157.98 to 171.22	174.98 to 179.92
	186.20 to 189.01		
<b>KANSAS</b>			
<b>Mainline</b>	189.01 to 189.40	195.13 to 196.39	202.42 to 204.70
	213.93 to 219.49	231.38 to 236.12	245.73 to 250.68
	256.25 to 258.00	261.82 to 262.88	265.91 to 268.96
	287.20 to 288.24	299.43 to 300.58	317.22 to 318.14
	322.14 to 323.41	326.57 to 334.73	342.55 to 346.34
	356.04 to 357.37	361.87 to 362.43	364.47 to 378.99
<b>South Rattlesnake Creek Lateral</b>	0.28 to 3.33		

32. Cheyenne Plains shall defer construction of facilities and use of all staging, storage, or temporary work areas and new or to-be-improved access roads until:
- a. Cheyenne Plains files with the Secretary and the appropriate State Historic Preservation Offices (SHPOs), and consults with the USFS and the Bureau of Land Management (BLM) as appropriate, all additional required cultural resources survey and evaluation reports and any necessary treatment plans;

- b. Cheyenne Plains files the comments of the appropriate SHPOs, the USFS, and the BLM as applicable on all cultural resources survey reports and plans; and
- c. the Director of OEP reviews and approves all cultural resources survey reports and plans, and notifies Cheyenne Plains in writing **that it may** proceed with treatment measures/mitigation programs or construction.

All material filed with the Secretary 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.”**