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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entrega Gas Pipeline Inc.

Docket Nos. CP04-413-000
CP04-414-000
and CP04-415-000

ORDER ISSUING CERTIFICATES

(Issued August 9, 2005)

1. On September 17, 2004, Entrega Gas Pipeline Inc. (Entrega) filed an application in Docket No. CP04-413-000, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate a new 328-mile interstate pipeline extending from the Piceance Basin in Colorado to the Cheyenne Hub to provide up to 1,500,000 Dth per day of firm transportation capacity for an affiliate, EnCana Marketing (USA) Inc. (EnCana Marketing). In Docket No. CP04-414-000, Entrega requests a blanket certificate pursuant to section 7(c) of the NGA and Part 284, subpart G of the regulations to provide open-access transportation services. In Docket No. CP04-415-000, Entrega requests a Part 157, subpart F blanket certificate authorizing it to construct, operate and/or abandon certain eligible facilities and services. Entrega also seeks approval of its proposed recourse rates and *pro forma* tariff.

2. We find that approval of Entrega's proposal is in the public interest to meet increasing shipper demand for the transportation of natural gas from Rocky Mountain production basins to markets accessible from Wamsutter and downstream of the Cheyenne Hub in Weld County, Colorado. Further, based on the environmental impact statement (EIS) prepared for Entrega's proposal, we find that, with appropriate mitigation, it is environmentally acceptable. Therefore, we will grant the requested certificate authorizations as modified and conditioned in this order.

Background and Proposal

3. Entrega was created on February 9, 2004 as a wholly-owned indirect subsidiary of EnCana Corporation and is authorized to conduct business in the states of Colorado and Wyoming. Upon receipt of the requested authorizations, Entrega will become a natural gas company within the meaning of section 2(6) of the NGA and will be subject to the Commission's jurisdiction.
4. Entrega proposes to construct the project in two phases. In Phase I, Entrega proposes to construct and operate approximately 136 miles of 36-inch diameter pipeline extending from the Meeker Hub in Rio Blanco County, Colorado through Moffat County, Colorado to Wamsutter in Sweetwater County, Wyoming (Segment 1 of Phase 1 construction) and approximately 191 miles of 42-inch diameter pipeline extending from Wamsutter through Carbon, Albany and Laramie Counties, Wyoming and Larimer County, Colorado, to the Cheyenne Hub in Weld County, Colorado (Segment 2 of Phase 1 construction). Entrega also proposes to construct seven delivery/receipt meter stations at interconnects with existing or proposed pipelines in Rio Blanco and Weld Counties in Colorado and Sweetwater County, Wyoming.
5. The Phase I facilities will have a capacity of 750,000 Dth per day, and a projected in-service date of January 1, 2006. The estimated cost of the Phase 1, Segment 1 facilities is approximately \$381,233,000, and the estimated cost of the Phase 1, Segment 2 facilities is approximately \$193,747,000, for total Phase 1 costs of approximately \$574,980,000.
6. Entrega states that to the extent it is able to place the Phase 1, Segment 1 facilities between the Meeker Hub and Wamsutter into service prior to January 1, 2006, it will provide interim service commencing no earlier than September 1, 2005.¹
7. In Phase II, Entrega proposes to construct and operate the 15,400 horsepower Meeker Hub Compressor Station in Rio Blanco County, Colorado; the 30,000 horsepower Bighole Compressor Station in Moffat County, Colorado; and the 20,620 horsepower Wamsutter Compressor Station in Sweetwater County, Wyoming. The Phase II facilities will increase the capacity of Entrega's pipeline from 750,000 Dth per day to 1,500,000 Dth per day. The Phase II compression facilities have a projected in-service date in April 2007. The estimated cost of the Phase II facilities is approximately

¹ On July 15 and 20, 2005, respectively, Entrega and EnCana Marketing filed letters requesting that the Commission issue a certificate by August 1, 2005 to enable Entrega to commence construction by August 15, 2005 in order to meet a November 15, 2005 in-service date for service to EnCana Marketing.

\$89,045,000, bringing the total estimated cost of Entrega's project to approximately \$664,025,000.

8. Entrega proposes to offer firm and interruptible transportation services, interruptible parking and lending services, and interruptible automatic parking and lending services. Entrega proposes two-part recourse rates for firm transportation service. For interruptible transportation service, Entrega proposes one-part recourse rates based on a 100 percent load factor derivative of the firm transportation rates.

9. Entrega's proposed recourse rates are based on an overall rate of return on equity of 12 percent and an overall pre-tax rate of return of 14.64 percent based on the 65 percent equity capital structure of its parent, EnCana Corporation. Entrega held an open season from June 4, 2004 through June 25, 2004, which resulted in Entrega's entering into a precedent agreement with EnCana Marketing to initially transport 500,000 Dth per day for 15 years, with an addition of up to 1,000,000 Dth per day for a total of 1,500,000 Dth per day pursuant to the negotiated rate option in Entrega's proposed tariff.

Interventions and Protests

10. Notice of Entrega's application and amendment was published in the *Federal Register* on October 5, 2004 (69 *Fed. Reg.* 59,585). Timely, unopposed motions to intervene were filed by BP America Production Company, jointly with BP Energy Company (BP); Cheyenne Plains Gas Pipeline Company, L.L.C.; Colorado Interstate Gas Company; David P. Cunningham; EnCana Marketing; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; Kinder Morgan Interstate Gas Transmission LLC; Trailblazer Pipeline Company; TransColorado Gas Transmission Company; Cheryl Morris; Questar Pipeline Company; TransCanada Corporation; Western Gas Resources, Inc.; Wyoming Interstate Company, Ltd.; and the Wyoming Natural Gas Pipeline Authority.²

11. The Medicine Bow Conservation District filed an untimely motion to intervene. We will grant their motion, since to do so at this stage of the proceeding will not delay, disrupt, or otherwise prejudice the proceeding or other parties.³

12. Cheryl Morris, a landowner near Cheyenne, Wyoming, filed a protest objecting to the proposed pipeline route through her property, noting numerous routing, access,

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2005).

³ 18 C.F.R. § 385.214(d) (2005)

safety, trespassing, land use, plant and wildlife concerns. Her concerns are addressed below.

13. BP protests Entrega's proposed rates and several of Entrega's proposed service conditions. Entrega filed a response to BP's protest, BP filed a reply to Entrega's response, and Entrega filed a response to BP's reply. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure prohibits responses and replies unless otherwise ordered by the decisional authority.⁴ We will accept these responses and replies because they have provided information that assisted us in our decision-making process. The issues raised by BP are addressed below.

Discussion

14. Since Entrega proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Entrega's proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

1. Application of the Certificate Policy Statement

15. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating major new construction.⁵ The 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 Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. 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 existing customers. The next step is to determine whether the

⁴ 18 CFR § 385.213(a) (2) (2005).

⁵ *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶61,277 (1999), *order clarifying statement of policy*, 90 FERC ¶61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶61,094 (2000).

applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

17. The Commission also considers potential impacts of the proposed project on other pipelines in the market and on those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

18. Entrega's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Entrega currently has no gas pipeline facilities or customers; thus, there will be no subsidization by existing customers. Approval of Entrega's proposed project also is consistent with the other considerations addressed by the Policy Statement. There will be no adverse effect on the applicant's existing services because Entrega has no current customers or services.

19. Entrega has made efforts to minimize impacts on landowners by co-locating 94 percent of the route within 300 feet of existing pipeline or utility rights-of-way, consistent with the Commission's preference that pipelines use existing utility corridors rather than creating new ones.⁶ Although more direct "regional" route alternatives were considered during Entrega's initial routing studies, these were discarded because of environmental and engineering constraints. Instead, Entrega choose to follow established utility rights-of-way to the extent practicable. Across the property owned by Cheryl Morris, who protests the routing of the pipeline through her property, Entrega's route is immediately adjacent to a major, established utility corridor. Although the existing utility corridor coincidentally parallels Interstate 80 between Wamsutter and southeastern Wyoming, to continue following the Interstate rather than cross the Morris property would be contrary to the "common-corridor" approach to utility routing.

20. Based on Entrega's most recent alignment sheets, the construction right-of-way will be more than 400 feet from the Morris residence at the closest point. Although construction will preclude placement of structures directly atop the pipeline, this limitation already exists for the other existing utilities in the corridor; construction is compatible with current land uses along the route.

⁶ See *Portland Natural Gas Transmission System*, 83 FERC ¶ 61,080 (1998).

21. Entrega will maintain access to the Morris property during construction either by establishing a detour or by maintaining one lane of traffic during the brief period when pipeline installation would require open-cutting the driveway. All applicable requirements of the U.S. Department of Transportation will be adhered to during the construction, testing, and operation of the pipeline facilities, including the requirement to cover the pipeline with a minimum of 30 inches of soil in all Class 1 locations.⁷

22. Ms. Morris's protest also alleges that Entrega trespassed during its survey across the property and, in doing so, damaged vegetation. As presented in the EIS, Entrega will implement specific measures to revegetate and restore all lands disturbed by construction. Private landowners may specify the seed mix(s) applied following construction or request/negotiate specific restoration efforts. Wildlife present during construction are expected to avoid areas directly affected until activities move to adjacent parcels. Further, our staff has recommended specific mitigation measures that will provide adequate opportunity for wildlife in most situations to cross or escape from the pipeline trench during construction. We further note that matters of trespass are mainly of local concern; if Entrega representatives are trespassing on property without permission, the affected persons should notify their local authorities.⁸

23. Moreover, the new pipeline will benefit interconnecting pipelines by providing new sources of gas for them to transport. There is a need for increased pipeline capacity to access gas supplies produced in the Rocky Mountain region. Entrega's project is being developed to provide access to those supplies. Based on the benefits the Entrega project will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find, consistent with the Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Entrega's proposal.

2. Rate Issues

a. Recourse Rates

24. The cost of constructing the entire Entrega Project, *i.e.*, Phase I and Phase II, will be approximately \$664,025,000. For any Interim Service before both phases of construction are complete and service thereafter, Entrega proposes a two-part rate for firm

⁷ The DOT defines Class 1 locations as having 10 or fewer buildings intended for human occupancy within 220 yards of the pipeline per mile.

⁸ See *Guardian Pipeline, LLC*, 94 FERC ¶ 61,269 (2001); *East Tennessee Natural Gas Company*, 102 FERC ¶ 61,225 (2003).

transportation service based on the applicable cost-of-service and an assumed 35-year life of the project. Entrega proposes a one-part rate for interruptible transportation service based on a 100 percent load factor derivative of the firm transportation rate. Entrega will also offer two interruptible parking and lending services: Parking and Lending Service (Rate Schedule PAL) and Automatic Parking and Lending Service (Rate Schedule APAL).

25. In Phase I, the pipeline will have no compression and a free flow capacity of 750,000 Dth per day from Meeker to Cheyenne. Entrega's estimated costs for Phase I is \$574,980,000. In Phase II, the capacity of the pipeline will increase to 1,500,000 Dth per day as a result of adding compression. Entrega's estimated cost for Phase II is \$89,045,000. The Phase I maximum reservation recourse rate of \$12.413 per Dth, the Phase II maximum reservation recourse rate of \$7.072 per Dth, as well as the Interim Service maximum reservation recourse rate of \$4.681 per Dth, are based on (1) a return on equity of 12 percent; (2) a 7 percent cost of debt; (3) a total effective tax rate of 36.03 percent; and a straight-line depreciation rate of 2.86 percent (or 35 year useful life).⁹ The overall pre-tax rate of return is 14.64 percent.

26. Entrega uses the Straight Fixed-Variable (SFV) method to design the firm transportation rates.¹⁰ The Phase I firm transportation rates are calculated using billing determinants of 9,000,000 Dth (or 750,000 Dth per day of capacity) and a first year cost of service of \$111,714,000.¹¹ The Phase II firm transportation rates are calculated using billing determinants of 18,000,000 Dth (or 1,500,000 Dth per day of capacity) and a first year cost-of-service of \$127,290,000.¹²

⁹ Entrega uses a 2.86 percent rate to depreciate its gas transmission plant and also its general and intangible plant assets.

¹⁰ In Phase I, the variable costs are estimated to be minimal, as there is no compression, so Entrega proposes to set the commodity rate at a token \$0.001 per Dth. With the addition of compressors in Phase II, the variable costs are expected to be higher, about \$0.003 per Dth.

¹¹ At 100 percent load factor, this equates to \$0.4081 per Dth per day.

¹² At 100 percent load factor, this equates to \$0.2325 per Dth per day.

27. Entrega states that its initial shipper, EnCana Marketing, requested that the Phase I pipeline facilities between the Meeker Hub and Wamsutter be in service by July 2005. To the extent that Entrega is able to place this segment of Phase I into service prior to January 1, 2006, Entrega will provide Interim Service from the Meeker Hub to Wamsutter. As stated earlier, the Phase I Entrega pipeline facilities are designed to have an initial deliverability of up to 750,000 Dth per day of free flow capacity. Entrega states that delivery capacity on the Meeker to Wamsutter portion of Phase I (Segment 1) over which Interim Service may be provided will be 800,000 Dth per day. Entrega anticipates that Interim Service would commence no earlier than September 2005. To derive the recourse rates for the Interim Service, the annualized cost-of-service for Segment 1 facilities (Meeker to Wamsutter) is divided by annualized volume (at a delivery capacity of 800,000 Dth per day) to derive the unit costs.¹³ As with Phase I, the commodity rate for Interim Service has been set at a nominal \$0.001 per Dth.

28. Entrega has also proposed two interruptible park and loan services. Entrega states that its proposed Park and Loan (PAL) services are similar to that found on other pipelines, and its Automatic Park and Loan (APAL) service is similar to that found on Colorado Interstate Gas Company's (CIG) system. The maximum PAL and APAL rates will be the same as Entrega's proposed IT rates for Phase I and Phase II, as well as for the Interim Service. In addition, APAL service has a monthly charge that is set at approximately 15 percent of the PAL rate, consistent with the relationship of these charges on CIG's system.

29. The Commission has reviewed Entrega's proposed cost of service and proposed initial maximum recourse rates for Phase I and II, as well as for the Interim Service, and generally finds them reasonable for a new pipeline entity, such as Entrega, subject to the conditions imposed below. We also find that Entrega's proposal for the calculation of its PAL and APAL services generally conforms with current Commission policy which

¹³ At a 100 percent load factor, the unit charge is \$0.1540 per Dth. For purposes of cost estimation to determine a cost-of-service for Interim Service (Meeker to Wamsutter), the pipeline has been divided into two parts, called Segment 1 (Meeker to Wamsutter) and Segment 2 (Wamsutter to Cheyenne). The cost of pipe for each segment is shown on Exhibit K. For Interim Service, Entrega has calculated the total fixed cost of service for Segment 1 facilities only, including pipe and relevant meter stations as \$44,938,000. This is an annualized cost of service used to derive the Interim Service rates.

allows pipelines to charge rates equal to their IT rate as an initial rate for park and loan services.¹⁴

b. Fuel Gas and Lost and UnAccounted for Gas

30. Entrega states its proposed cost of service excludes costs for fuel gas and lost and unaccounted-for (FL&U) gas. Entrega states it will recover those costs from its shippers through an in-kind retention. In Phase I, the projected FL&U amount is estimated to be 0.15 percent. In Phase II, after compression is added, the estimated FL&U amount is 0.78 percent.

31. Section 26 of Entrega's *pro forma* tariff covers its recovery of fuel gas and lost and unaccounted for gas. The FL&U consists of compressor station fuel and fuel for other utility purposes, including line losses and other unaccounted-for gas on Entrega's system. Transactions that do not consume fuel will not be assessed a fuel charge; however, such transactions will be assessed a charge for lost and unaccounted for gas. The FL&U Percentage shall be recomputed at least annually, and will be adjusted to account for actual experience. The first FL&U adjustment filing shall be made 15 months after the in-service date of Entrega's system. Thereafter, the FL&U annual adjustment filings shall be made on the one year anniversary date of the first filing. We find that Entrega's proposed initial fuel reimbursement percentages and proposed FL&U recovery mechanism are acceptable.

c. Negotiated Rates

32. Entrega's precedent agreement with EnCana Marketing is a negotiated rate agreement.¹⁵ Any service agreement signed with a shipper containing a negotiated rate must comply with our *Alternative Rate Policy*,¹⁶ our decision in *NorAm Gas*

¹⁴ See *e.g.*, *Northwest Pipeline Corp.*, 100 FERC ¶ 61,336 (2002); *Kinder Morgan Interstate Gas Transmission LLC*, 95 FERC ¶ 61,479 (2001) and *Mojave Pipeline Company*, 79 FERC ¶ 61,347 (1997) (permitting a pipeline to use an existing IT rate as the reference rate for park and loan services).

¹⁵ The agreement with EnCana Marketing provides for a fixed daily negotiated rate of \$.1840 per Dth. The maximum reservation recourse rates on a 100 percent load factor basis are \$.4081 per Dth for Phase I and \$.2325 per Dth for Phase II.

¹⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996).

*Transmission Company (NorAm)*¹⁷ and our *Modification of Negotiated Rate Policy*.¹⁸ Consistent with *NorAm*, Entrega will be required to file either its negotiated rate contract or numbered tariff sheets 30 days prior to the commencement of service on Entrega's facilities, stating for each shipper paying a negotiated rate 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 respect with the *pro forma* service agreement in Entrega's FERC Gas Tariff.¹⁹ Entrega must also disclose all consideration linked to the agreements. In addition, Entrega must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future rate case under section 4 or 5 of the NGA.

d. Rate Design

33. Entrega proposes postage stamp rates for its system. BP asks the Commission to require Entrega to adopt distance-sensitive or zoned rates to ensure that the transportation charge paid by a shipper reflects only that the portion of the system that the shipper relies on. BP points to the Commission's regulations which provide that rates "must reasonably reflect any material variation in the cost of providing the service due to the distance over which the transportation is provided."²⁰ BP asserts that distance-based rates are usually appropriate when the distance of contractual gas flow mimics the actual gas flow. BP says that is the case here, where gas flow on Entrega will be unidirectional, from the Piceance Basin in western Colorado through Wamsutter, and then terminating at the Cheyenne Hub.

¹⁷ 74 FERC ¶ 61,076 (1996). Entrega's authority to charge negotiated rates is found in Section 29 of the General Terms and Conditions of Entrega's *pro forma* tariff.

¹⁸ 104 FERC ¶ 61,134 (2003).

¹⁹ Under the Commission's current regulations, when a pipeline makes a filing to implement a negotiated contract purported to conform to the pipeline's form of service agreement in all material aspects, the pipeline is not required to file the contract. However, such a filing must contain a statement that the pipeline's filing complies with the requirements of 18 C.F.R. § 154.1(d) (2005). Violation of this regulation may result in the rejection of the filing or suspension of the pipeline's negotiated rate.

²⁰ 18 C.F.R. § 284.10(c)(2) (2005).

34. BP also asserts that the presence of mid-system receipt and delivery points is another factor that supports distance rates on Entrega. BP states that if the predominant gas flow is across the pipeline's entire system, all shippers are using the entire system; hence, distance-based rates are not needed to impose higher costs on longer versus shorter flow paths. BP asserts, by contrast, if shippers are using receipt and delivery points all along the pipeline, distance-based rates could be appropriate to ensure that shippers that use more of the pipeline's system pay more. BP states that this is the situation on Entrega since substantial gas supplies will be delivered into Entrega throughout its system. BP states that the Wamsutter Field is roughly in the middle of Entrega. Further, BP claims that gas supplies that Entrega anticipates accessing at Wamsutter are reflected in the fact that the diameter of the pipeline will increase to 42 inches at Wamsutter. Moreover, BP points to Entrega's statement that Entrega can readily expand the Wamsutter to Cheyenne Hub portion of its system to a capacity of 2,000,000 Dth per day, as compared to the 1,500,000 Dth per day capacity of the upstream portion of the system.

35. BP also suggests that the market center at Wamsutter is another reason why distance rates are needed on Entrega, citing the Commission's definition of a market center as "an area where gas purchases and sales occur at the intersection of different pipelines."²¹ BP points out that Wyoming Interstate Company (WIC) and CIG have facilities at Wamsutter, and that Entrega has plans to interconnect with WIC's and CIG's systems at Entrega's station at Wamsutter. BP argues that a postage stamp rate structure could inhibit the development of a market center when a shipper has to pay for substantial amounts of capacity both upstream and downstream of a market center in order to use only the upstream or the downstream part of the system.²² Thus, in this case, BP states that distance rates are needed here to ensure that shippers whose receipt point is at Wamsutter do not pay for the 136 miles of upstream facilities that these shippers do not use.

36. BP also contends that Entrega designed its open season to confer an advantage, through the use of a postage stamp rate structure, upon Entrega's affiliate, EnCana Marketing. BP asserts that the only reason why no other shippers bid on capacity on the Entrega pipeline is because they encountered the risk that they would have to pay the cost

²¹ 18 C.F.R. § 284.1(c) (2005).

²² 18 C.F.R. § 284.8(b)(5) and § 284.9(b)(5) (2005).

of hauling gas across the entire Entrega system. BP states that Entrega's rate structure favors the long-haul, multi-year service requested by EnCana Marketing, and this explains why no partial haul shippers bid for the capacity, especially for short-term service.²³

37. In its answer, Entrega states that the Commission's "policy with regard to distance sensitivity in rate making is not absolute," and the Commission "has not established a bright line distinction when a pipeline must design its rates based on zone or mileage, as opposed to the postage-stamp design proposed by [Entrega]"²⁴ The Commission has also recognized that postage stamp rates are not inconsistent with the goals of Order No. 636.²⁵ Moreover, Entrega asserts, the Commission has approved postage stamp rates for

²³ Under Entrega's open season procedures, bids were divided into three tiers. There were two tiers at negotiated rates (Tiers 1 and 2), and a third tier at the recourse rate (Tier 3). Tier 1 included a Minimum Daily Negotiated Reservation Rate of \$0.184 for a CD of at least 500,000 Dth per day for a 15 year term; Tier 2 included a Minimum Daily Negotiated Reservation Rate of \$0.184 per Dth for a CD of at least 300,000 Dth per day for a 10 year term; Tier 3 included a Daily Maximum Recourse Reservation Rate estimated to be \$0.27 per Dth (based on a design capacity of 1,000,000 Dth per day) for a CD of at least 10,000 Dth per day, up to 300,000 Dth per day, for a 10 year term.

Section 3(c)(iv) of the open season materials provided that Entrega could consider bids requesting less than the Daily Maximum Recourse Reservation Rate for service from Wamsutter to Cheyenne (Short Haul Bids). To be considered by Entrega, Short Haul Bids were required to request a rate of at least \$.13 per Dth for a minimum term of 10 years.

The order of award for capacity is Tier 1 shippers first, then if sufficient capacity, Tier 2 shippers, then if sufficient capacity, Tier 3 shippers.

²⁴ *Quoting Greenbrier Pipeline Co., LLC*, 101 FERC ¶ 61,122, at P 77 (2002); 103 FERC ¶ 61,024, at P 41 (2003).

²⁵ *See, e.g., East Tennessee Natural Gas Co.*, 64 FERC ¶ 61,159, at p. 62,320 (1993).

other Rocky Mountain region interstate pipelines that are similar in size (average length is 335 miles) and are also unidirectional lines.²⁶

38. Entrega also disputes BP's contention that postage stamp rates would inhibit the development of a market center at Wamsutter. At the outset, Entrega points out that there are currently no "Wamsutter shippers" on the proposed Entrega pipeline. Secondly, Entrega argues that BP has presented no evidence to support its assertion that Wamsutter is a market center. Entrega states that Wamsutter is just one of the many different producing areas in the Rocky Mountain region and is not an aggregation point for supply from various producing areas like the Cheyenne Hub.

39. Entrega also answered BP's allegations about the open season. Entrega points out that when it held the open season in June 2004, the open-season materials clearly listed Wamsutter as a possible receipt point. However Entrega did not receive any bids from shippers seeking service from Wamsutter to the Cheyenne Hub. Entrega states it bears noting that not only did BP not submit a bid, but BP did not express any interest in Entrega during the open season. Entrega states it is more telling that not one of the potential shippers that did contact Entrega during the open season has protested any aspect of Entrega's certificate application or raised any allegation of impropriety.

40. We will deny BP's protest and find that Entrega's proposal for postage stamp rates as its initial rates under section 7 of the NGA is appropriate for this new pipeline. At the outset, BP states that it supports the construction of Entrega's 327-mile project. There is no dispute among the parties in this proceeding that there is a need for increased pipeline capacity to access supply sources in the Rocky Mountains. In the early development stage of its project, Entrega met with several potential shippers that indicated a need for additional capacity to transport production out of the Piceance Basin. Entrega held an open season in June 2004 for its proposed pipeline which the Open Season materials stated would extend from the Piceance Basin to the Cheyenne Hub. Entrega proposed a postage stamp rate structure for its system, although its open season materials specifically stated that it would consider bids for service from Wamsutter to Cheyenne.

²⁶ *See, e.g.*, Cheyenne Plains Gas Pipeline Company (380-mile line flowing gas from Cheyenne Hub in northwestern Colorado to a terminus in southwestern Kansas); TransColorado Gas Transmission (236-mile line flowing gas from Greasewood, Colorado to the Blanco Hub in San Juan County, New Mexico); WIC (291-mile line flowing gas from western Wyoming to the Cheyenne Hub in northeastern Colorado); and Trailblazer Pipeline (436-mile line flowing gas from an interconnect with WIC near Rockport, Colorado to an interconnect with Natural Gas Pipeline Company of America and Northern Natural Gas Company at Beatrice, Nebraska).

41. The Commission permits project sponsors flexibility in designing new pipeline projects, and that includes the initial proposed rate structure. Moreover, there are no hard and fast rules regarding the minimum length of a unidirectional pipeline that would justify distance rates.²⁷ We find that Entrega's postage stamp rate design is consistent with Commission policies that promote greater access to new gas supplies and is comparable to the rate structures that have been approved for other pipelines with similar length systems in the western part of the country.

42. BP claims that the existence of mid-system receipt points, including Wamsutter, is the reason why distance rates are needed for Entrega's proposed pipeline. But BP did not bid on the capacity. The one long-term precedent agreement with EnCana Marketing is for the full initial capacity of the entire pipeline (1,500,000 Dth per day) for transportation from Meeker to Cheyenne. Thus, even as BP would suggest, in that case, there is no reason for distance based or zone rates, when the capacity is fully subscribed for the length of the system.

43. While distance based rates on Entrega could presumably benefit BP, none of the other potential bidders or gas consumers have disputed Entrega's rate design. Indeed, we reject BP's market center arguments regarding Wamsutter. Postage stamp rates can facilitate market centers and competition because all shippers have access to secondary points, and can release capacity anywhere on the system rather just in a single zone. Further, Entrega shippers will have the capability to segment their service entitlements. Segmentation will provide sufficient flexibility to all participants in the secondary market to accommodate the interest of short haul shippers.

44. Finally, we note that the development of intermediate markets, system expansions, and changes in the utilization of Entrega's pipeline system may be factors in a future rate case in determining whether postage stamp rates should continue, but the arguments BP raise here are premature and speculative at this time. For all of these reasons, BP has failed to make a showing that Entrega's proposed postage-stamp rate design is inappropriate.

e. Return on Equity and Capital Structure

45. Entrega states that it anticipates the cost of the Entrega Project will be initially financed using corporate funds available from EnCana Corporation, of which Entrega is

²⁷ For example, Kern River Gas Transmission Company's 700-mile pipeline that extends from Wyoming to California was originally certificated in 1990 by the Commission to operate with postage stamp rates, and continues to do so today.

an indirect wholly-owned subsidiary.²⁸ Entrega states its capital structure will be based on EnCana Corporation's capital structure of 65 percent equity and 35 percent debt.²⁹ Entrega proposes a 12 percent return on equity (ROE) and states this equity return is based upon Entrega's review of Commission-approved returns for pipelines with similar capital structures.³⁰

46. BP states that Entrega should be required to modify its capital structure and lower its proposed ROE from 12 percent to 9.57 percent. BP does not favor Entrega's use of its parent's capital structure (an equity ratio of 65 percent). According to BP, an imputed capital structure should be used instead, with an equity ratio of no more than 50 percent. BP contends that the average ratio of pipelines with bond ratings is 53.3 percent³¹. BP asserts that Entrega's proposed 65 percent equity ratio is much "thicker" than the ratio used by the Commission in establishing rates for Enbridge Pipelines (41 percent), Energy

²⁸ See Exhibit L of Entrega's application filed on September 17, 2004. See also Entrega's response to Staff's Question No. 5 filed on February 9, 2004. Entrega stated that it does not have plans to refinance the project using funds raised in the capital markets. Entrega states that funds expended to date have been advanced by EnCana Corporation, and Entrega states it anticipates that the project will continue to be financed using corporate funds available from EnCana Corporation for the foreseeable future.

²⁹ See Entrega's supplemental response to Staff Question No. 5 filed on March 9, 2005. Entrega states that EnCana Corporation's capital structure on December 31, 2004, was 33.43 percent debt and 66.57 percent equity. Entrega states that even though use of EnCana's December 31, 2004 capital structure would result in an increase in Entrega's rates, Entrega proposes to retain the capital structure it filed with its original certificate application on September 17, 2004.

³⁰ Citing *Petal Gas Storage, L.L.C.*, 106 FERC ¶ 61,325 (2004) (50/50 debt to equity ratio, 12.48% ROE); *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 (2003) (38.70% debt, 2.32% preferred stock, 58.98% equity and 12.48% ROE); *Portland General Electric Co.*, 105 FERC ¶ 61,023 (2003) (53% equity, 46% debt, 1% preferred stock and 12.35% ROE); *Williams Natural Gas Co.*, 84 FERC ¶ 61,080 (1998) (64.29% equity, 35.71% debt and 13.46% ROE). Entrega states that although some of these cases are rate proceedings and not certificate proceedings, the Commission employs a similar discounted cash flow analysis in both types of cases in order to determine the appropriate ROE.

³¹ See Appendix A to BP's protest filed on October 19, 2004.

West Development Inc. (50 percent), and B-R Pipeline (50 percent).³² BP states this same 50 percent equity ratio was also the average of a six-company proxy group endorsed by the Commission and is comprised of companies that own a pipeline regulated by the Commission. Moreover, BP states that all six³³ are included in the Natural Gas (Diversified) industry group published by The Value Line Investment Survey. BP states that Entrega's proposed ROE of 12 percent is too high. BP claims that application of a discounted flow analysis (DCF analysis) based on current data would support a ROE that is no higher than 9.57 percent.

47. We reject BP's protest. Commission policy is to use a pipeline's own capital structure. If the pipeline does not provide its own financing, the Commission looks to another entity. The Commission policy in this regard is to use the actual capital structure of the entity that does the financing for the regulated pipeline. However, if the actual capital structure of the entity providing the financing is anomalous relative to the capital structures of the publicly traded proxy companies used in the DCF analysis, and capital structures approved for other regulated pipelines, the Commission may employ a hypothetical capital structure.

48. Since Entrega is owned entirely by its parent, EnCana Corporation, it is appropriate to use EnCana Corporation's capital structure, as the Commission generally prefers the use of actual entities.³⁴ EnCana Corporation has provided the capital for the construction of Entrega's pipeline. Commission policy is to adopt a hypothetical capital structure only in extreme circumstances. Those circumstances are not present here. In fact, Entrega's proposed capital structure compares favorably with those the Commission has approved in other cases, such as *Williams Natural Gas Pipeline Co.*, 86 FERC ¶ 61,232 (1999), where the Commission approved a capital structure of 64 percent equity and 36 percent

³² *Enbridge Pipelines*, 100 FERC ¶ 61,260, p. 61,959 (2002); *Energy West Development, Inc.*, 103 FERC ¶ 61,015 at P 13 (2003); and *B-R Pipeline Co.*, 105 FERC ¶ 61,025 at P 17 and P 38 (2003).

³³ They are the El Paso Corporation., Equitable Resources Inc., Kinder Morgan Inc., National Fuel Gas Supply Company, Questar Corporation, and The Williams Companies.

³⁴ See *Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260 at P 185 (2002) (to the maximum extent possible, the Commission bases capital structure on real entities, the pipeline or a company associated with the pipeline, that obtains financing for the pipeline).

debt.³⁵ Accordingly, we will use the proposed capital structure in the design of Entrega's initial rates. Further, we disagree that Entrega's proposed 12 percent ROE is too high. A 12 percent ROE is well within the range allowed by the Commission for other recent new pipeline infrastructure proposals, and is appropriate here.

49. Entrega proposes a 7 percent cost of debt. When Entrega files its revised initial rates, it must modify the cost of service and resulting rates conditionally authorized herein to the extent necessary to reflect the actual cost of debt incurred to construct the project.

f. Interruptible Services Revenue Crediting

50. Entrega does not propose to allocate costs to its interruptible transportation (Rate Schedule IT) and interruptible park and loan services (Rate Schedules PAL and APAL). Instead, Entrega proposes to credit 50 percent of the revenues net of variable and administrative costs, to its firm transportation shippers.³⁶ Entrega would retain the remaining 50 percent. BP protests Entrega's proposed 50/50 crediting mechanism.

51. The Commission's policy regarding new interruptible services requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.³⁷ Consistent with precedent, the Commission will require Entrega to allocate an appropriate level of the estimated cost of service to its interruptible services, recalculate its rates, and file documentation demonstrating its recalculation. In the alternative, Entrega may credit the IT, PAL, and APAL revenues to its firm and interruptible shippers. If it does so, Entrega must revise its tariff to provide for a mechanism to credit 100 percent of the IT, PAL, and APAL revenues, net of variable costs only, to its firm and interruptible cost-based recourse rate shippers.

g. Rate Review

52. Consistent with Commission precedent, the Commission will require Entrega to file a cost and revenue study at the end of its first three years of actual operation that includes both Phases I and II, to justify its existing cost-based firm and interruptible recourse

³⁵ See also *Williston Basin Pipeline Co.*, 104 FERC ¶ 61,036 (2003) (approving the company's proposed equity ratio of 58.98 percent).

³⁶ See section 20.4 of Entrega's General Terms and Conditions.

³⁷ See, e.g., *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136 at p. 61,475 (1997), *order on reh'g*, 81 FERC ¶ 61,166 at pp. 61,725-26 (1997).

rates.³⁸ In its filing, the projected units of service should be no lower than those upon which Entrega's approved initial recourse rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Entrega may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

3. Pro Forma Tariff Issues

53. Exhibit P of this certificate application contains Entrega's *pro forma* tariff, in conformance with Part 154 of the Commission's Regulations, containing the rates, rate schedules, general terms and conditions, and forms of service agreement covering firm and interruptible transportation services under Rate Schedules FT and IT and two interruptible park and loan services under Rate Schedules PAL and APAL. Entrega's *pro forma* tariff is in general compliance with Part 284 of the Commission's regulations and current Commission policy, including Order Nos. 587 and 637, subject to the conditions outlined below.

54. Since Entrega filed its certificate application in September 2004, the Commission issued an order in *Williston Basin Pipeline Company* that allowed pipelines to remove language in their tariffs which reflected the Commission's discount policy enunciated during the Order No. 637 proceedings.³⁹ Entrega may also eliminate similar language that is now included in section 3.3 of Entrega's proposed Rate Schedule FT. Also, the Commission issued Order No. 587-S which adopted the latest standards (Version 1.7) of the North American Energy Standards Board (NAESB). Order No. 587-S also adopted standards ratified by NAESB to implement Order No. 2004 (Standards of conduct for Transmission Providers), and standards ratified by NAESB to implement gas quality requirements.⁴⁰ Therefore, the Commission is directing Entrega to revise its tariff to be

³⁸See, e.g., *Trunkline LNG Co.*, 82 FERC ¶ 61,198, at 61,780 (1998), *aff'd sub nom*, *Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999); *Horizon Pipeline Co., L.L.C.*, 92 FERC ¶ 61,205, at 61,687 (2000); *Vector Pipeline Co.*, 85 FERC ¶ 61,083 (1998).

³⁹ 110 FERC ¶ 61,210 (2005) (pipelines may remove tariff language that sets forth a rebuttable presumption policy and two-hour processing requirement for discounts).

⁴⁰ *Standards for Business Practices of Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,203 (2005).

compliant with Order No. 587-S as modified by any future NEASB requirements then in effect.

55. Entrega has agreed to remove the thermal floor provisions from its tariff.⁴¹ Entrega has also agreed to modify its tariff to permit its shippers to flow gas on a non-uniform hourly basis, except when necessary for Entrega to maintain system integrity.⁴² Finally, there are two other tariff provisions included in Entrega's *pro forma* tariff concerning reservation charge adjustments and related liability issues that are discussed below.

a. Reservation Charge Adjustments

56. Section 3.4 of Entrega's proposed Rate Schedule FT includes a mechanism for reservation charge adjustments if Entrega fails to schedule the nominated and confirmed quantities up to a Shipper's Maximum Daily Quantities. Under this provision, Entrega will provide such adjustments as follows: If the failure to schedule was due to a *non-force majeure* or planned maintenance event, Entrega would provide no adjustment for the first 15 days of service failure, a full adjustment for days 16 through 30 of the service failure, and a partial adjustment for any day after the 30th day of service failure. If the failure to schedule was due to *force majeure* or an unplanned maintenance event, Entrega would provide a partial adjustment of the reservation charges that represented Entrega's equity return and associated taxes for the entire period of force majeure or unplanned maintenance.⁴³

57. BP challenges Entrega's proposal as it pertains to *non-force majeure* or planned maintenance events since Entrega would not provide for any credit for the first 15 days of service failure and only a partial credit after Day 30. BP states Entrega's proposal is not consistent with Commission policy.

⁴¹ See Entrega's response Staff's Question No. 4 filed on February 9, 2005.

⁴² See Entrega's response to Staff's Question Nos. 2 and 3. See section 22.1 of Entrega's General Terms and Conditions and section 2.4 of Rate Schedule FT.

⁴³ Specifically, section 3.3(f) provides that the reservation rate to be applied will be 48 percent of the maximum recourse rate (representing Transporter's equity return and associated taxes). Reservation charge credits under discounted or negotiated rate TSAs shall be applicable only to that portion of the rate that exceeds 52 percent (the amounts other than equity return and associated tax portion) of the maximum recourse rate. This percentage will be re-determined whenever the maximum recourse rate changes.

58. The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a *non-force majeure* or planned maintenance event, the failure was due to the pipeline's conduct and was within its control.⁴⁴ In that case, a there must be a full reservation charge adjustment as to the undelivered amount. However, the Commission has found that when the pipeline's failure to deliver is due to a *force majeure* or unplanned maintenance event, all parties should share the risk.⁴⁵ In this circumstance, the pipeline would be required to provide a partial reservation charge adjustment to the affected firm shippers. We have found that a partial reservation charge adjustment could take the form of covering a portion of the pipeline's reservation rate that is associated with the pipeline's return on equity and associated income taxes or there could be a short grace period (*e.g.*, within the first 10 days of the event) when the pipeline would be excused from providing any credits. However, after the grace period ends, the pipeline is at risk for the entire reservation charge.⁴⁶

59. We find that Entrega's proposed reservation charge adjustments where the failure to deliver was due to a *force majeure* event is consistent with Commission policy. However, we agree with BP that Entrega's proposed reservation charge adjustments as it pertains to *non-force majeure* or planned maintenance events needs to be modified. Under its proposal, Entrega does not provide for any credit for the first 15 days of service failure and only a partial credit after Day 30. A full reservation charge adjustment is required starting at Day 1. Accordingly, Entrega must revise section 3.4 of its Rate Schedule FT to eliminate its proposed exemptions (*e.g.*, no adjustments for the first 15 days of service failure, and a partial adjustment after the 30th day of service failure) from full reservation charge adjustments in *non-force majeure* situations.⁴⁷

b. Entrega's Liability for Service Interruptions

60. Section 3.4(g) of Rate Schedule FT provides that the reservation charge credit "shall be Shipper's sole and exclusive remedy" for Entrega's failure to schedule nominated and

⁴⁴ See *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003). See also *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 (1996), *order on reh'g*, 80 FERC ¶ 61,070 (1997).

⁴⁵ *Id.*

⁴⁶ See, *e.g.*, *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310 (2004), *order denying reh'g and granting clarification*, 108 FERC ¶ 61,170 (2004). See also *Paiute Pipeline Company*, 109 FERC ¶ 61,139 (2004), *order on reh'g*, 111 FERC ¶ 61,107 (2005).

⁴⁷ *Id.*

confirmed quantities unless damages incurred by Shipper are shown to be the result of gross negligence or willful misconduct by Entrega.⁴⁸ BP asserts that the Commission should reject this provision as it would absolve Entrega of liability for damages due to simple negligence. BP cites *Guardian Pipeline, L.L.C.*, where the Commission observed that it has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs.⁴⁹ Thus, BP asserts, Entrega's proposal violates the Commission policy.

61. In reply, Entrega notes that in the same *Guardian* case, the Commission also said that it "has allowed pipelines to limit their liability for negligence to direct damages, so that they are only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, willful misconduct, or bad faith."⁵⁰ Entrega submits that under Commission precedent it is appropriate that Entrega's tariff confine Entrega's exposure to "direct damages" in cases of simple negligence on the pipeline's part; and that damages other than direct damages (*i.e.* "consequential," etc.) would be available only in instances involving Entrega's gross negligence or willful misconduct.⁵¹

62. Entrega states that should a shipper experience an interruption due to simple negligence in the operation or maintenance of the Entrega system, the shipper will be denied the capacity for which the shipper has paid a reservation charge. Entrega states that this is an item of the shipper's direct damages.⁵² According to Entrega, *Guardian*

⁴⁸ Section 4.3(g) adds that if a court makes such a finding (*i.e.*, the damages are the result of gross negligence or willful misconduct by Entrega), then Entrega shall only be liable for its proportionate amount of negligence.

⁴⁹ 101 FERC ¶ 61,107 (2002).

⁵⁰ *Id.* at P 16 (footnotes omitted).

⁵¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49846, at P 900 (2003) (*citing* Black's Law Dictionary at 394 (7th ed. 1999) for proposition that consequential damages are losses that flow indirectly – rather than directly and immediately – from an injurious act).

⁵² *See, e.g., Evra Corp. v. Swiss Bank Corp.*, 673 F.2d 951, 955 (7th Cir. 1982) (fees paid for services not rendered are "direct" or "general" damages; lost profits and other "dislocations in [non-breaching party's] business" are consequential damages"); and *Rexnord Corp. v. DeWolff Boberg & Assoc., Inc.*, 286 F.3d 1001, 1004 (7th Cir. 2002) (degree of foreseeability underlies the distinction between direct and consequential damages; payment for services not rendered is foreseeable and there fore direct damages; consequential damages are not foreseeable since they depend on "matters internal" to
(continued...)

and Order No. 2003 hold that the shipper is entitled to a remedy for this. Entrega submits that under its *pro forma* tariff, the shipper will receive that remedy, that is, an appropriate credit to the shipper's reservation charge. Entrega states that it is also possible (but by no means certain) that the shipper will forego profits on a lost sale due to a service interruption. However, Entrega contends that whether this loss will occur and the extent of any loss are simply not foreseeable by Entrega -- they are "matters internal" to the shipper, or consequential damages.⁵³ Thus, Entrega asserts, under *Guardian* and Order No. 2003, it is entirely proper for an interstate pipeline's tariff to limit the pipeline's exposure to these damages to instances involving gross negligence or willful misconduct. Entrega states its *pro forma* tariff does precisely that and is thus consistent with Commission precedent and policy.

63. BP contends that Entrega misconstrues Commission policy regarding the damages that a pipeline can be liable for when they are due to simple negligence. BP suggests that direct damages encompass the extra expenses and financial harm incurred by a shipper as a direct result of responding to the curtailment. BP states that direct damages would include then what Article II of the Uniform Commercial Code (UCC) refers to as incidental damages.⁵⁴ Under the UCC, incidental damages include "any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other response incident to the delay or other breach."⁵⁵ BP suggests that this interpretation of direct damages has been embraced by the courts⁵⁶ and by the model gas sale contract developed by the NAESB.⁵⁷

non-breaching party).

⁵³ *Id.*

⁵⁴ BP states that Entrega's precedent contract with EnCana Marketing provides that the contract will be interpreted consistent with Colorado law (Exhibit I, p. 5, § 12). BP states that Colorado's version of the UCC tracks the model UCC.

⁵⁵ See section 2-715 of the model UCC, which provides that (1) after a breach, the buyer may cover by making in good faith and without reasonable delay any reasonable purchase of or contract to purchase goods in substitution due from the seller; and (2) the buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

⁵⁶ See *Petroleo Brasileiro, S.A. Petrobras v. Ameropan Oil Corp.*, 372 F.Supp. 503, 508 (E.D.N.Y. 1974), cited in White and Summers, *Uniform Commercial Code*, p. 224 (5th edition, 2000).

⁵⁷ See NAESB Standard 6.3.1, §3.2, p. 4. The Cover Standard is defined in §2.10, p. 3.

64. BP states in the context of curtailment, direct damages encompass the expenses incurred by the shipper in obtaining capacity on other pipelines, and obtaining gas supplies, to serve its markets in response to Entrega's failure to satisfy its firm service obligation. Further, BP states that it is unhelpful for Entrega to explain that the difference between direct and consequential damages is the degree to which damages are foreseeable. BP contends a shipper's incurrence of extra costs to acquire supply and pipeline capacity in response to a curtailment by Entrega is obviously a "foreseeable" and "highly probable" result of curtailment. Thus, BP argues that the Commission should reject Entrega's attempt to shield itself from direct damages associated with the pipeline's simple negligence.

65. We will require Entrega to modify its proposed language. The Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs.⁵⁸ The Commission, however, has allowed pipelines to limit their liability for negligence to direct damages, so that they are only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, undue discrimination or willful misconduct or bad faith.⁵⁹

66. Section 3.4(g) of Entrega's Rate Schedule FT provides that the reservation charge credit "shall be the Shipper's sole and exclusive remedy" for Entrega's failure to schedule nominated and confirmed quantities unless damages are shown to be the result of gross negligence or willful misconduct. Consistent with *Guardian*, Commission policy permits the pipeline to include in its tariff a general provision limiting its liability for any negligent acts to "direct damages". The Commission, however, is unwilling to make a blanket finding that the only possible direct damages in the context of a negligent inability to schedule service are the reservation charge credits for the period of service failure. The parties should be free to consider any appropriate direct damages in light of a particular negligent act leading to an inability to schedule service. Entrega's proposed section 3.4(f) could be construed as to insulate Entrega from direct damages due to simple negligence, contrary to Commission policy. Thus, Entrega must modify this provision to clarify that nothing in that section insulates Entrega from liability for direct damages resulting from its own negligence.

⁵⁸ See, e.g., *Gulf South Pipeline Company*, 98 FERC ¶ 61,278 at 62,182 7 n. 56 (2002); *Williams Pipe Line Company*, 88 FERC ¶ 61,014 at 61,040 & n. 31 (1999); and *Natural Gas Pipeline Company* 39 FERC ¶ 61,153 at 61,599 (1987).

⁵⁹ *ANR Pipeline Company*, 100 FERC ¶ 61,132 at 61,505 (2002).

4. Accounting

67. An allowance for funds used during construction (AFUDC) is a component part of the cost of constructing Entrega's pipeline facilities. Gas Plant Instruction 3(17) prescribes a formula for determining the maximum amount of AFUDC that may be capitalized as a component of construction cost.⁶⁰ That formula, however, uses prior year book balances and cost rates of borrowed funds and other capital. In cases of newly created entities, such as Entrega Gas Pipeline, prior year book balances do not exist; therefore, using the formula contained in Gas Plant Instruction 3(17) could produce inappropriate amounts of AFUDC.

68. Therefore, to ensure that appropriate amounts of AFUDC are capitalized in this project, we will require Entrega to capitalize the actual cost of borrowed and other funds, and for construction purposes, not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved herein. This is consistent with what we have required in other similar cases.⁶¹

5. Facility Design

69. The Commission has reviewed and analyzed the flow diagrams, flow information, and additional model information submitted with Entrega's application and responses to data requests filed on October 27, 2004. This analysis confirms that Entrega has designed Phase I of its pipeline project to transport 750,000 Dth per day of natural gas on a firm basis from the Meeker Hub to the Cheyenne Hub. Further, after the compressor addition proposed in Phase II, Entrega's pipeline system will be able to provide 1,500,000 Dth per day of firm natural gas transportation service from the Meeker Hub to the Cheyenne Hub. We have also confirmed that if Phase I, Segment 1 (Meeker to Wamsutter) is placed into service prior to the completion of Phase I, Segment 2 (Wamsutter to Cheyenne), Entrega will be able to provide up to 800,000 Dth per day on a firm basis from Meeker to Wamsutter.

⁶⁰18 C.F.R. Part 201 (2005).

⁶¹ See, e.g., *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 (2000); and *Buccaneer Gas Pipeline Company L.L.C.*, 91 FERC ¶ 61,117 (2000).

6. Environmental

70. On July 1, 2005, we issued a final environmental impact statement (EIS) that was prepared by our staff. The FEIS⁶² was mailed to approximately 808 agencies, groups, and individuals on the mailing list. A distribution list of entities receiving the document is included as appendix A of the final EIS. The U. S. Environmental Protection Agency (EPA) noticed issuance of the final EIS on July 8, 2005 (70 *Fed. Reg.* 39,508).

71. The EIS was prepared with the participation and assistance of the U.S. Department of the Interior's Bureau of Land Management (BLM), which acted as a cooperating agency under the National Environmental Policy Act (NEPA). Because the BLM must comply with the requirements of NEPA before granting rights-of-way across lands under its management, cooperating agency status allows it to adopt the EIS to meet its responsibilities. About 32 percent of the project crosses lands under the administration of the BLM. BLM is considering the issuance of a new right-of-way (ROW) grant and associated temporary use permits that will apply to BLM-managed lands crossed by the project. The BLM's decision will be documented in a project Record of Decision (ROD) prepared by the BLM.

72. Based on information provided by Entrega and further developed by field investigations, literature research, alternative and route variation analyses, and contacts with federal, state, and local agencies and individual members of the public, the EIS determines that construction and operation of the project will result in limited adverse environmental impact.

73. The EIS concludes that if the project is constructed and operated as proposed by Entrega and in accordance with the recommended mitigation measures, it would be an environmentally acceptable action. Although many factors were considered in this determination, the principal reasons are:

- 94 percent of the pipeline will be located within 300 feet of existing pipeline, utility, and road ROWs. Where the pipeline parallels existing pipelines, it will generally be installed at a 40-foot offset from the nearest pipeline centerline;
- the project would be consistent with or in conformance with federal resource management plans; and

⁶² Like the draft EIS, the final EIS was distributed to recipients either as a stand-alone Executive Summary or as a full EIS.

- an environmental inspection and mitigation monitoring program would ensure compliance with all mitigation measures that become conditions of certification.

74. We have reviewed the information and analysis contained in the EIS regarding potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EIS and find that Entrega's project, if constructed and operated as described in the EIS and in accordance with the recommended environmental mitigation measures in appendix B to this order, is environmentally acceptable. Therefore, we are including the environmental mitigation measures recommended in the EIS as conditions to the authorizations issued to Entrega by this order.

75. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶³ Entrega shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Entrega. Entrega shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

7. Conclusion

76. For the reasons set forth herein we find, subject to the conditions below, that the public convenience and necessity requires issuance of a certificate under section 7(c) of the NGA for Entrega's proposed pipeline facilities. Thus we grant the requested authorizations to Entrega.

77. The Commission on its own motion, received and made a part of the record all evidence, including the application, amendment, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

⁶³See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Entrega in Docket No. CP04-413-000 authorizing it to construct, own, operate, and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application.

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

- (1) Entrega completing the authorized Phase I construction within one year of this order and the authorized Phase II construction within two years of this order;
- (2) Entrega complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Entrega's compliance with the environmental conditions listed in Appendix B to this order; and
- (4) Entrega making a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved herein into effect, including redlined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* tariff, including those changes discussed in the body of the order.

(C) Entrega shall file a cost and revenue study at the end of its first three years of actual operation that includes both Phases I and II, to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Entrega's approved initial recourse rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. In the alternative, in lieu of this filing, Entrega may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

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

(E) Entrega's requests for NGA section 284 and 157 blanket certificates in Docket Nos. CP04-414-000 and CP04-415-000, respectively, are granted.

(F) Entrega must execute firm contracts equal to the level of service and in accordance to the terms of service represented in its precedent agreement prior to commencement of construction.

(G) Entrega shall adhere to the accounting requirements set forth in the body of this order.

(H) BP's protest is granted and denied as discussed in the body of the order.

(I) Cheryl Morris's protest is denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix A

Interventions and Protests

1. BP America Production Company and BP Energy Company (protest)
2. Cheyenne Plains Gas Pipeline Company, L.L.C.
3. Colorado Interstate Gas Company
4. David P. Cunningham
5. EnCana Marketing (USA) Inc.
6. ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation
7. Kinder Morgan Interstate Gas Transmission LLC, Trailblazer Pipeline Company, and TransColorado Gas Transmission Company
8. Medicine Bow Conservation District (late)
9. Cheryl Morris (protest)
10. Questar Pipeline Company
11. TransCanada Corporation
12. Western Gas Resources, Inc.
13. Wyoming Interstate Company, Ltd.
14. Wyoming Natural Gas Pipeline Authority

Appendix B

Environmental Mitigation Measures

1. Entrega Gas Pipeline Inc. (Entrega) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the environmental impact statement (EIS), unless modified by the Commission Order. Entrega 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 (Director of OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
 - 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 conditions of this Order.
3. **Prior to any construction**, Entrega 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. **As soon as they are available, and before the start of construction**, Entrega shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Entrega's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Entrega's 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 (ROW) for a pipeline to transport a commodity other than natural gas.

5. Entrega 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 required herein, additional areas allowed by Entrega's Upland Erosion Control, Revegetation, and Maintenance Plan, or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this Certificate and before construction** begins, Entrega shall file an initial Implementation Plan with the Secretary for the review and written approval of the Director of OEP describing how Entrega will implement the mitigation measures required by this Order. Entrega must file revisions to the plan as schedules change. The plan shall identify:

- a. how Entrega 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 a description of how Entrega 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 material;
 - d. the training and instructions Entrega 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 Entrega's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Entrega 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. Entrega shall employ a team of EIs (i.e., three or more) per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Entrega shall file updated status reports prepared by the head EI with the Secretary on a weekly basis **until all construction-related activities, including restoration activities, are complete**. On request, these status reports also will 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 EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of 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 the Commission Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Entrega from other federal, state, or local permitting agencies concerning instances of noncompliance, and Entrega's response.
9. Entrega must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation/restoration of the ROW and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Entrega 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 Entrega has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Entrega shall include the White River in its assessment of potential streambed scour depths, so that this information will be available for design purposes if an open-cut crossing is ultimately required at this location.

12. If severe wind erosion occurs (as noted by exposed pipe, deflation, or dune formation), Entrega shall install and monitor erosion prevention devices (e.g., snow fences) to ensure soil stabilization as part of its ongoing maintenance program. Entrega shall notify the Commission of severe erosion and its mitigation in Entrega's quarterly activity reports to the Commission.
13. **Prior to construction**, Entrega shall revise its Weed Management Plan to include:
 - a. identification of the locations by milepost (MP) where noxious or invasive weeds are currently present either within or immediately adjacent to all areas of project-related disturbance; and
 - b. a site-specific plan for each location where weeds are present which:
 - i. describes options for pretreatment (including the month(s) of the year when pretreatment would be effective);
 - ii. identifies who was consulted regarding possible pretreatment options; and
 - iii. includes whether the landowner/administrator has approved of the pretreatment.
14. Entrega shall conduct weed management surveys and control measures at least once every 3 years (following the initial 5 years of reclamation and weed control surveys) for the life of the project. Reports of these surveys would be sent to all appropriate conservation districts, local governments, weed management areas, weed and pest councils, and affected Bureau of Land Management (BLM) Field Offices. Entrega shall develop measures and strategies for long-term weed control by consultations with these groups, as well as the appropriate Natural Resources Conservation Service offices and affected landowners. Entrega's developed methods and comments from the various agencies shall be filed with the Secretary for the review and written approval of the Director of OEP before implementation.
15. Entrega shall develop and implement an environmental complaint resolution procedure that remains active for at least 3 years following the completion of construction. The procedure shall provide landowners, local governments, and weed management agencies (affected parties) with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Entrega shall mail the complaint resolution procedure to each landowner whose property would be crossed by the project and to each affected agency.

- a. In its letter to affected parties, Entrega shall:
 - i. provide a local contact and telephone number that the affected parties should call first with their concerns; the letter shall indicate how soon they should expect a response;
 - ii. provide Entrega's Hotline phone number and instruct the affected parties that, if they are not satisfied with the response, they should call the Entrega Hotline; the letter shall indicate how soon to expect a response; and
 - iii. instruct the affected parties that, if they were still not satisfied with the response from Entrega's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030 or at hotline@ferc.gov.
 - b. In addition, Entrega shall include a table in its weekly status report containing the following information for each problem/concern:
 - i. the identity of the caller and the date of the call;
 - ii. the identification number from the certificated alignment sheet(s) of the affected property and approximate location by MP;
 - iii. a description of the concern/problem; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
16. To minimize impact on water supply wells and systems, Entrega shall:
- a. file with the Secretary **prior to construction** the location by MP of all water supply wells or water supply systems within 200 feet of all construction work areas. For each, the filing shall identify the type of feature (well, pipeline conveyance, lined channel) and its use (domestic, municipal, industrial, agricultural, etc.);
 - b. revise its Blasting Plan to clarify that ground vibration monitoring would be conducted at all aboveground structures, water supply wells, and water supply systems within 200 feet of construction areas subject to blasting; and
 - c. provide an alternative source of water until any water supply well/system damaged during construction is repaired/replaced or the water rights owner is fairly compensated for the damage.
17. Entrega shall revise its proposed route between MPs 6.7 to 8.2 and MPs 12.8 to 13.8 (as shown in figures 3.3-3 and 3.3-4 of the final EIS, respectively) to reduce the number of crossings of Piceance Creek. Revised alignment sheets shall be

filed with the Secretary for review and written approval by the Director of OEP **prior to construction.**

18. Entrega shall consult with the U.S. Fish and Wildlife Service (FWS), Colorado Department of Wildlife (CDOW), and Colorado Department of Public Health and Environment (CDPHE) to establish withdrawal and discharge rate guidelines and practices for water used in preliminary testing of the horizontal directionally drilled (HDD) crossings.
19. Entrega shall file with the Secretary for the review and written approval of the Director of OEP **prior to construction**, revised Site-Specific Waterbody Crossing Plans (including contingency plans) that include a 50-foot setback for the Little Snake, White, and Yampa Rivers.
20. Entrega shall coordinate with Wyoming Interstate Company (WIC) regarding the crossings of the Yampa and Little Snake Rivers. This coordination shall attempt to minimize in-stream and bank disturbances and shall consider the use of a shared crossing bridge at each location. Entrega shall file the results of this coordination with the Secretary for the review and written approval of the Director of OEP prior to constructing these crossings.
21. Entrega shall continue to consult with the water supply operators and the appropriate federal and state agencies regarding potential impacts on water supplies and the need for specific mitigation measures during pipeline construction.
22. **Prior to construction**, Entrega shall finalize their Hydrostatic Test Plan in consultation with pertinent state and federal agencies (FWS, Wyoming Game and Fish Department [WGFD], Wyoming Department of Environmental Quality, CDOW, CDPHE) and appropriate conservation districts. Entrega also shall:
 - a. provide additional descriptions of the discharge/erosion control structures that would be utilized at the discharge locations;
 - b. document these agency consultations and file the finalized Hydrostatic Test Plan with the Secretary for review and written approval of the Director of OEP **prior to construction**; and
 - c. consult and coordinate with the appropriate agencies and organizations immediately before and during the hydrostatic testing program (including the discharge phases) to account for changing site-specific conditions and to ensure that impacts are avoided or minimized in applicable agency jurisdictions.

23. Entrega shall file with the Secretary its final Construction Mitigation and Revegetation Plan (including a line list by MP of proposed wetland mitigation measures) for review and written approval by the Director of OEP **prior to commencing service**. Entrega shall include the comments of the land management and state agencies with whom it consulted during plan development and indicate whether reclaiming wetlands with native species was suggested by these agencies.
24. To facilitate the restoration of riparian woodlands disturbed by project construction, Entrega shall:
 - a. conduct pre-construction surveys in woody riparian areas to determine the existing vegetation community composition and density. Based on the results of these surveys, Entrega shall reseed and replant with these existing tree and shrub species at pre-construction densities, accounting for intact root masses; and
 - b. file site-specific plans for each of the six riparian woodland crossings (North Platte River, Medicine Bow River [2], a tributary to Foote Creek, and Rock Creek [2] crossings) with the Secretary for review and written approval by the Director of OEP **prior to construction activities in these riparian woodland communities**. In developing these plans, Entrega shall locate temporary workspace areas to avoid riparian woodland to the maximum extent practicable. Entrega shall provide detailed justification for any temporary workspace area that is not sited to avoid disturbance of riparian woodland. At a minimum, each plan shall include:
 - i. an inventory of the area of disturbance, based on the preconstruction survey;
 - ii. site-specific measures to avoid or reduce the extent of riparian woodland disturbance;
 - iii. site-specific measures to restore all riparian woodland disturbance to near-preconstruction conditions;
 - iv. an aerial-photo based plot plan showing all areas of disturbance, environmental controls, and restoration measures (scale 1:1,200); and
 - v. specific criteria for assessing restoration success.
25. **Prior to construction at the Medicine Bow River**, Entrega shall prepare and file with the Secretary for review and written approval of the Director of OEP a report indicating whether an HDD crossing is feasible at the Medicine Bow River crossing, and evaluating another route(s) for crossing the river that would avoid or minimize the number of trees to be removed by construction.

26. Entrega shall consult with the FWS and appropriate state agencies to determine appropriate mitigation for discharging hydrostatic test water within the brown trout spawning season.
27. In order to reduce potential impacts on wildlife from pipeline construction, Entrega has committed to placing earthen ditch plugs, with ramps on either side, at 1-mile intervals along the trench and at well-defined livestock and wildlife trails intersected by the trench on federal lands. Entrega shall adhere to the following mitigation measures uniformly throughout the project.
 - a. Entrega shall place earthen ditch plugs, with ramps on either side, at 1-mile intervals along the trench and at well-defined livestock and wildlife trails intersected by the trench. These plugs would provide a means for wildlife to escape if individuals fall into the trench and also would provide a bridge for other wildlife to cross the open trench.
 - b. Entrega also shall leave breaks in the strung and welded pipe, topsoil, and spoil piles at locations that correspond to the earthen trench plugs to allow movement of wildlife and livestock across the construction ROW.
 - c. The pipeline trench shall be inspected on a regular basis during construction and immediately prior to backfilling to identify entrapped animals. Wildlife found in trenches during construction shall be coaxed to the nearest ramp and either be encouraged to exit the trench, removed by hand, or trapped (if other methods are unsuccessful). If any animal in the trench is determined to be a sensitive species, only authorized individuals shall be allowed to remove it from the trench.
 - d. Entrega shall limit the duration that welded pipe would be left above the ditch by lowering the pipe no later than 7 days after pipe segments are joined.
28. To facilitate wildlife crossover/escape from the ditch, Entrega's EIs shall, as needed and in conjunction with the federal agencies' compliance monitors, modify the spacing of ditch-plug bridges/escape ramps and breaks in the strung and welded pipe at specific locations where the 1-mile spacing is found to be inappropriate.
29. To minimize the impacts to big game species during winter, Entrega shall:
 - a. avoid Wildlife Habitat Management Area lands during non-emergency maintenance activities from November 15 through April 30; and
 - b. in addition to the winter constraint period, avoid construction in the Colorado Division of Wildlife's Bitter Brush State Wildlife Area from October 10 through November 21 to avoid heavy hunter concentration areas.

30. Entrega shall coordinate with the BLM to obtain applicable historic raptor nest locations, **prior to conducting preconstruction surveys for raptors.**
31. Entrega shall conduct pre-construction clearing of suitable habitat for shrub-nesting species for the proposed 2006 construction. Such clearing would be conducted in late fall 2005 or winter 2005/early 2006 (prior to the 2006 migratory bird nesting season), which would make the cleared areas unattractive to potential nesters and thus avoid destruction of active nests during actual construction. Suitable habitat (scrub-shrub) for shrub nesters is primarily located along the western portion of Phase 1, Spread 3 and 4 (between MP 135.5 to 236.68 and MP 285.2 to 286.9). Entrega shall file a preconstruction clearing plan with the Secretary for the review and written approval of the Director of OEP **prior to initiating clearing.** This plan shall identify MPs to be cleared and provide results of consultations and any applicable permits and authorization from the BLM and/or WGFD that address the extent and method of clearing and fall/winter project activity in big game ranges, as applicable.
32. **Prior to conducting blasting at any location along the construction ROW,** Entrega shall file the results of its FWS consultation with the FERC for review and approval of the Director of OEP. The filing shall specify the specific locations (by MP) where blasting may occur, known raptor and other migratory bird nest locations within the general vicinity of the blasting, and mitigation measures that would be implemented to minimize impacts on nesting birds.
33. Entrega shall conduct preconstruction field surveys for federally listed plant species (i.e., the Colorado butterfly plant, Dudley Bluffs bladderpod, blowout penstemon, Dudley Bluffs twinpod, and Ute ladies'-tresses) in areas subject to project-related disturbance in accordance with its Special Status Species Survey Plan. **Prior to construction,** Entrega shall file the following information with the Secretary:
 - a. name(s) and qualifications of the person(s) conducting the survey;
 - b. method(s) used to conduct the survey;
 - c. date(s) of the survey;
 - d. area surveyed (include the MPs surveyed); and
 - e. results of the surveys, to indicate species presence or absence.
34. If a federally listed plant species is found during the preconstruction surveys, Entrega must notify the Commission staff and the FWS before commencing any project construction activity. This notification shall contain Entrega's evaluation of whether or not the plant(s) could be avoided by reroute or by the use of a horizontal bore. Further, Entrega **shall not begin construction activities until:**

- a. the staff receives comments from the FWS regarding the proposed action;
 - b. the staff completes formal consultation with the FWS, if required; and
 - c. Entrega has received written notification from the Director of OEP that construction or use of mitigation may begin.
35. Entrega **shall not begin construction of Phase 1, Spread 4 activities until:**
- a. Entrega files with the Secretary for review and written approval by the Director of OEP its evaluation of possible ROW re-alignments to avoid Preble's meadow jumping mouse habitat;
 - b. the staff receives the Preble's meadow jumping mouse survey report as well as comments from the FWS on the survey report and the proposed action's effects on the Preble's meadow jumping mouse;
 - c. the staff completes formal consultation with the FWS, if required; and
 - d. Entrega has received written notification from the Director of OEP that construction or use of mitigation may begin.
36. Entrega shall not construct within 0.5 mile of active bald eagle nest sites in Colorado or within 1 mile of active nests in Wyoming during the nesting season. In Colorado, bald eagles generally nest from November 15 through July 31. Bald eagles generally nest from February 1 through August 15 in Wyoming.
37. If Entrega encounters a previously unidentified active bald eagle nest within 1 mile of the construction ROW in Wyoming or within 0.5 mile of the construction ROW in Colorado, Entrega shall concurrently notify the Commission staff, the BLM (if on federal land), and the FWS, and file such information with the Secretary. Entrega **shall not continue with construction** until the staff has reviewed the information, completed any necessary consultation with the FWS, and the Director of OEP notifies Entrega in writing that construction may proceed or use of mitigation may begin.
38. In order to minimize impacts on roosting bald eagles, Entrega shall conduct surveys for roosting eagles within potential winter roost areas if construction occurs between November 15 and March 15 in Colorado (between November 1 and April 15 in Wyoming). In the event that occupied bald eagle winter roost sites are identified within 0.25 mile of construction areas in Colorado or within 1 mile of construction areas in Wyoming, Entrega shall coordinate with the BLM (if on federal land) and the FWS to determine if protection measures (e.g., timing restrictions and/or buffer areas) would be required. Entrega shall report the results of the coordination in a filing with the Secretary, and **shall not begin construction** until the staff has reviewed the information, completed any necessary consultations with the FWS, and the Director of OEP notifies Entrega in writing that construction or use of mitigation may begin.

39. Entrega shall identify all potential bald eagle roosting trees on or immediately adjacent to the ROW and assess measures to avoid any trees that could be damaged by construction. Any potential bald eagle roosting tree that Entrega believes could not be avoided shall be identified to the staff with a justification as to why the tree must be removed and what measures Entrega considered before determining that removal was necessary. This information shall be filed with the Secretary for the review and written approval of the Director of the OEP **before construction** or use of mitigation may begin.
40. For areas where the construction ROW is within 0.25 mile of a sage grouse lek site (whether active or inactive), Entrega shall reduce its construction ROW width to 75 feet.
41. In Colorado, if low intensity preconstruction (e.g., surveying and staking) work is necessary within 2 miles of known sage grouse leks between March 1 and June 30, activities shall occur only between 9:00 a.m. and 4:00 p.m. In Wyoming, if low intensity preconstruction work is necessary within 0.25 mile of known sage grouse leks between March 1 and May 15, activities shall occur only between 8:00 a.m. and 8:00 p.m.
42. In the event that Entrega cannot complete an HDD crossing of the White or Yampa Rivers, Entrega shall not begin a non-HDD crossing until the staff completes any necessary Section 7 consultation with the FWS, and the Director of OEP notifies Entrega in writing that it may proceed with an alternate river crossing method.
43. Entrega shall provide a detailed justification for any area where it proposes to use a 125-foot-wide construction ROW for more than 0.5 mile at a time. The justification shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction in that area.**
44. **Prior to construction**, Entrega shall revise its Site-Specific Waterbody Crossing Plan for the North Platte River to include specific measures to avoid or minimize impacts on recreational boat users. If an open-cut crossing is ultimately necessary at the White or Yampa Rivers, Entrega shall similarly revise the site-specific crossing plans for these locations. All revised site-specific waterbody crossing plans shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction.**

45. Entrega shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads **until**:
- a. Entrega files with the Secretary all remaining cultural resource inventory and evaluation reports, and necessary avoidance or treatment plans;
 - b. Entrega files with the Secretary the BLM's and the Colorado and Wyoming State Historic Preservation Offices' comments, as applicable, on all reports and plans; and
 - c. the Director of OEP reviews and approves all reports and plans and notifies Entrega in writing that it may proceed.

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

46. To confirm compliance after construction, Entrega shall file a noise survey with the Secretary **no later than 60 days** after placing the Bighole Compressor Station in service. If the noise attributable to the operation of the compressor station at full load exceeds 55 dBA L_{dn} at any station property line, Entrega shall install additional noise controls to meet that level within 1 year of the in-service date. Entrega shall confirm compliance with the L_{dn} of 55 dBA commitment by filing a second noise survey with the Secretary no later than 60 days after Entrega installs the additional noise controls.
47. Entrega shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized unit(s) at the Meeker Hub and Wamsutter Compressor Stations in service. If the noise attributable to the operation of the compressor stations at full load exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive area, Entrega shall install additional noise controls to meet that level **within 1 year** of the in-service date. Entrega shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after Entrega installs the additional noise controls.
48. To reduce potential cumulative dewatering effects on the Little Snake River during low flows, Entrega shall coordinate their hydrostatic testing and dust control water withdrawals with WIC such that no Entrega and Piceance Basin Expansion water withdrawals occur simultaneously from the Little Snake River.
49. At the Arlington and Cheyenne Hub sites, Entrega shall limit the land acquired by eminent domain under the NGA to an area no larger than that needed to construct and operate the proposed facilities. In this case, the Arlington Pigging Station and the Cheyenne Hub Metering Station would require no more than 1 and 2 acres,

respectively. This does not place a limit on Entrega's ability to purchase land on the open market at these sites for future use. **Prior to the start of construction,** Entrega shall file with the Secretary for review and written approval by the Director of OEP scaled plot plans for these sites.