

121 FERC 61,259  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Guardian Pipeline, L.L.C.

Docket Nos. CP07-8-000  
CP07-8-001  
CP07-8-002

ORDER ISSUING CERTIFICATE

(Issued December 14, 2007)

1. On October 13, 2006, in Docket No. CP07-8-000, Guardian Pipeline, L.L.C. (Guardian) submitted an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct and operate the proposed G-II expansion project. On April 25, 2007, in Docket No. CP07-8-001, and on July 2, 2007, in Docket No. CP07-8-002, Guardian filed amendments to its proposed project.<sup>1</sup> As amended, Guardian's proposed project consists of 119.2 miles of 12- to 30-inch diameter pipeline extending from Ixonia to Green Bay, Wisconsin, 78,000 horsepower (hp) of compression, seven meter stations, and appurtenant facilities. The proposed project will result in an incremental 537,200 dekatherms of gas per day (Dth/d) of firm capacity on Guardian's existing G-1 system from Joliet, Illinois, to Ixonia, Wisconsin, and 437,200 Dth/d of new firm capacity from Ixonia to Green Bay, Wisconsin.

2. For the reasons stated below, we will grant the requested authorizations, subject to conditions.

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<sup>1</sup> Guardian's first amendment altered approximately 23 miles of the proposed route to avoid tribal lands, adding approximately 8.74 miles to the total length of the expansion pipeline. Guardian's second amendment made minor route variations between milepost (MP) 88.0 and 98.2.

## **I. Background and Proposal**

### **A. The Proposed G-II Expansion Project**

3. Guardian's existing G-I interstate natural gas facilities consist of approximately 143 miles of 36-inch diameter pipeline that extends from Joliet, Illinois, to Ixonia, Wisconsin, with a capacity of 750,000 Dth/d.
4. The proposed G-II expansion project facilities will include:
  - 83.9 miles of 30-inch diameter pipeline in Jefferson, Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties, Wisconsin;
  - 31.3 miles of 20-inch diameter pipeline in Brown and Outagamie Counties, Wisconsin;
  - 1.4 miles of 16-inch diameter branch line (the Denmark Branch Line) in Brown County, Wisconsin;
  - two 20-inch diameter branch lines, including the 1.8-mile long Southwest Green Bay Branch Line in Brown County, Wisconsin, and the 0.8-mile long West Green Bay Branch Line in Outagamie County, Wisconsin;
  - two new 39,000 hp electric-driven compressor stations, including the Sycamore Compressor Station in Sycamore Township, DeKalb County, Illinois, and the Bluff Creek Compressor Station in La Grange, Wisconsin;
  - modifications to the existing Ixonia Meter Station in Jefferson County, Wisconsin, and the construction of seven new meter stations in Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties, Wisconsin;
  - new pig launcher/receiver facilities at Guardian's existing Ixonia Meter Station in Jefferson County, Wisconsin, the proposed Fox Valley Meter Station in Calumet County, Wisconsin, and the proposed West Green Bay Meter Station in Outagamie County, Wisconsin; and
  - six new mainline valves (MLVs); four along the 30-inch diameter pipeline in Dodge, Fond du Lac, and Calumet Counties, Wisconsin, and two along the 20-inch diameter pipeline in Brown and Outagamie Counties, Wisconsin.
5. Non-jurisdictional facilities related to the proposed G-II project include: (1) six new interconnecting pipelines to be constructed by the Wisconsin Public Service Corporation (WPSC) and Wisconsin Energy Corporation (We Energies); (2) a new

electric power tap and power line to be constructed by Commonwealth Edison to connect its transmission line to the Sycamore Compressor Station in Illinois; and (3) a new electric power tap to be constructed by We Energies to connect American Transmission Company's transmission line to the Bluff Creek Compressor Station in La Grange, Wisconsin.<sup>2</sup>

6. Guardian seeks to commence construction in March 2008, and place its expansion facilities in service on November 1, 2008. Guardian estimates its proposed G-II project will cost \$261,436,000.

7. Guardian states that since 1990, natural gas consumption in Wisconsin has increased by more than 25 percent to nearly 400 billion cubic feet annually;<sup>3</sup> that between 1990 and 2004, the number of commercial and industrial gas customers has increased by approximately 40 percent; and that combined gas use in the commercial and industrial sectors, excluding electric generation, has increased by more than 18 percent from 1990 to 2004.<sup>4</sup> Observing that its existing facilities are currently 98 percent subscribed, and that other existing pipeline capacity in Wisconsin is constrained, Guardian concludes that there is insufficient available incremental capacity to serve Wisconsin consumers and businesses. Thus, Guardian believes that expanding gas capacity is vital to the state's economic development and long-term competitiveness. Guardian notes that currently ANR Pipeline Company (ANR) is the only interstate pipeline serving the eastern Wisconsin market north of Milwaukee, and Guardian expects its proposed expansion to benefit consumers in eastern Wisconsin by providing increased gas supply flexibility and reliability.

8. Guardian has executed precedent agreements with three local distribution companies (LDCs) for FT-2 Service for an initial term of 15 years: Wisconsin Gas LLC

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<sup>2</sup> The WPSC and We Energies interconnecting pipelines will be subject to the regulatory jurisdiction of the Public Service Commission of Wisconsin. The electric power line facilities related to the Sycamore Compressor Station will be subject to the regulatory jurisdiction of the Illinois Commerce Commission.

<sup>3</sup> Guardian cites *Wisconsin Energy Statistics 2005*, Wisconsin Department of Administration, Madison, Wisconsin; *Wisconsin Energy Statistics 2006 Preliminary Draft*, Wisconsin Department of Administration, Madison, Wisconsin.

<sup>4</sup> Guardian cites *Wisconsin Energy Statistics 2005*, Wisconsin Department of Administration, Madison, Wisconsin.

(Wisconsin Gas) for 90,105 Dth/d,<sup>5</sup> Wisconsin Electric Power Company (Wisconsin Electric Power) for 201,656 Dth/d, and WPSC for 205,245 Dth/d.

9. Guardian conducted an open season from June 29 to July 21, 2006 to solicit interest for the remaining 40,200 Dth/d of the proposed 537,200 Dth/d of expansion capacity, but received no offers.

**B. Guardian's Proposed Rates**

10. Guardian is proposing a new Rate Schedule FT-2 as its recourse rate for the expansion facilities. The new Rate Schedule FT-2 is similar to the existing Rate Schedule FT-1, but adds an enhanced hourly flow capability. The hourly flow capability allows a shipper to transport up to 90 percent of its MDQ over 20 hours. Guardian's proposed maximum daily reservation recourse rate for transportation service under Rate Schedule FT-2 is \$0.2205/Dth with a commodity rate of \$0.00/Dth. The recourse rate is based on a three-year average of the cost of service using a depreciation rate of two percent.<sup>6</sup> Further, Guardian is proposing new interruptible service under Rate Schedule IT-2, with similar enhanced hourly flow rights as Rate Schedule FT-2. The proposed daily Rate Schedule IT-2 rate, \$0.2205/Dth, is based upon a 100 percent load factor derivative of the firm FT-2 reservation recourse rate.

11. Guardian has agreed to provide expansion service at the negotiated rate, inclusive of charges for service under existing Rate Schedule EAW and proposed Rate Schedule MA, with expansion shippers to pay Transporter's Use Gas, the Electric Power Cost Recovery Rate, the Annual Charge Adjustment surcharge (ACA), and any other applicable surcharges. Guardian proposes to assess the Transporter's Use Gas surcharge on all Rate Schedules FT-2 and IT-2 shippers. No changes will be made to the currently effective Transportation Use Gas Percentage.

12. Guardian is proposing a continuation of the existing shippers' Rate Schedule EAW, with an MDQ equivalent to the effective MDQ under the corresponding Rate

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<sup>5</sup> As part of its precedent agreement, Wisconsin Gas agreed to extend its existing Rate Schedule FT-1 and Rate Schedule EAW service agreements for a ten-year period commencing December 7, 2012, and ending December 6, 2022, at a rate of \$0.120 Dth/d and \$0.00 Dth/d, respectively.

<sup>6</sup> A 2.0 percent depreciation rate for a transmission plant was agreed to in an uncontested settlement approved by the Commission on February 6, 2006. *Guardian Pipeline, L.L.C.*, 114 FERC ¶ 61,112 (2006).

Schedule FT-2. Rate Schedule EAW is an enhanced aggregation and wheeling service applicable to the gas-fired turbine compressors that helps ensure third-party delivery point operators (Aggregators) are not discriminated against. The negotiated rate for the term of the Rate Schedule EAW Service Agreement is \$0.00/Dth.

13. Guardian is proposing a new administrative market aggregation service under Rate Schedule MA in order to relieve aggregators of the burden of continuously balancing delivery points. Guardian states that this new service will minimize exposure to operational imbalances for shippers. In the proposed tariff language, at least three different points will be established in the service agreement: an MA point, a physical delivery point, and a separate physical delivery point to be used as a designated balancing point. Aggregators will use the designated MA point to nominate quantities of gas to be delivered at physical delivery points.

14. Guardian also proposes an Electric Power Cost Recovery Provision to recover the electric costs incurred by Guardian at its electric-driven compressor stations. Guardian contends that the cost recovered will be adjusted for the variance between estimated and actual electric costs, and for the variance between estimated and actual dekatherms. Guardian requests rolled-in rate treatment for the Transporter's Use Gas Provision and the Electric Power Cost Recovery Provision, explaining that it is difficult to determine whether it will use electric compressors for existing G-I shippers or the proposed G-II shippers on any given day. With rolled-in rate treatment, Guardian believes the existing G-I shippers will increase reliability by gaining access to new delivery points on the G-II line under their existing Rate Schedule FT-1 service agreements.

## **II. Notice and Interventions**

15. Public notice of Guardian's application in Docket No. CP07-8-000 was published in the *Federal Register* on October 30, 2006.<sup>7</sup> Notice of the first amended application, in Docket No. CP07-8-001, and the second amended application, in Docket No. CP07-8-002, were published in the *Federal Register* on May 10, 2007<sup>8</sup> and July 18, 2007,<sup>9</sup> respectively. Timely, unopposed motions to intervene were filed by ANR Pipeline Company (ANR); Peoples Energy Wholesale Marketing, LLC; Wisconsin Electric Power Company; Wisconsin Gas LLC; Northern Natural Gas Company; Constellation

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<sup>7</sup> 71 Fed. Reg. 63,291 (2006).

<sup>8</sup> 72 Fed. Reg. 26,615 (2007).

<sup>9</sup> 72 Fed. Reg. 39,390 (2007).

NewEnergy; Wisconsin Public Service Corporation; and Robert G. Van Rossum.<sup>10</sup> ANR's pleading included comments which are addressed below.

### **III. Discussion**

16. Because Guardian's application for its proposed G-II expansion facilities pertains to facilities to be used to transport natural gas in interstate commerce, the requested construction and operation of such facilities is subject to the jurisdiction of the Commission and NGA sections 7(c) and 7(e).

#### **A. Policy Statement on New Facilities**

17. In order to determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our policy statement addressing new facilities.<sup>11</sup> In this policy statement, we establish criteria for determining whether there is a need for a proposed project, balancing the public benefits of a proposed project against its potential adverse impacts, and determining whether a proposed project will serve the public interest. Our goal in evaluating proposed projects is to give appropriate consideration to: the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, an applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions to the environment, and the avoidance of the unnecessary exercise of eminent domain.

18. Under this policy, the threshold requirement for an existing natural gas company proposing a new project is that the company be prepared to financially support its planned project without relying on subsidization from its existing customers. The next step is to determine whether the company has made efforts to eliminate or minimize any adverse effects the planned project might have on its existing customers, on existing pipelines in the market and their captive customers, or on landowners and communities affected by the planned project. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we then evaluate the planned project by balancing the evidence of public benefits to be achieved against the residual

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<sup>10</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

<sup>11</sup> *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities)*, 88 FERC ¶ 61,227 (1999); *orders clarifying statement of policy*, 90 FERC ¶ 61,128 (2000) and 92 FERC ¶ 61,094 (2000).

adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on the economic interests will we proceed to complete the environmental analysis where other interests are considered.

19. Guardian has proposed incremental rates for services using its proposed G-II expansion capacity. Thus, Guardian has eliminated the potential for subsidization by existing customers and will bear the risk of underrecovery of the project's costs, satisfying the policy statement's threshold criterion. Further, the project should have no other adverse effects on Guardian's services to its current customers.

20. Guardian states that "expanding natural gas transportation capacity in Wisconsin is vital to the state's economic development and long-term competitiveness."<sup>12</sup> Because ANR cautions against relying on this statement as a rationale for a proposed project that will be capable of serving only a limited area of the state, we clarify that our focus in this proceeding is on the need for expanded gas transportation capacity for additional gas supplies for the customers Guardian proposes to serve. We find Guardian has demonstrated a need for its proposed G-II expansion project by submitting precedent agreements for long-term, firm service for 497,006 Dth/d, representing the entire capacity of the proposed expansion's facilities north of Milwaukee and approximately 93 percent of the 537,200 Dth/d of incremental capacity the expansion will make available from Joliet, Illinois, to Ixonia, Wisconsin.<sup>13</sup>

21. In assessing whether the proposed expansion might adversely impact other pipelines or their customers, ANR asks the Commission to consider whether gas transported on Guardian's expansion will displace volumes that would otherwise flow through ANR's existing facilities.<sup>14</sup> We find nothing in the record to imply that this will

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<sup>12</sup> Guardian's *Application*, at 10 (October 13, 2006).

<sup>13</sup> Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Guardian executes contracts that reflect the levels and terms of service represented in its precedent agreements. *See, e.g., Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, P 21 (2002).

<sup>14</sup> ANR cites *Tuscarora Gas Transmission Company*, 103 FERC ¶ 61,204 (2003) (*Tuscarora*), in which a project sponsor submitted statements from prospective shippers attesting that the new services they sought would be incremental to the area served and would not displace existing services. However, in *Tuscarora*, questions were raised regarding whether specific shippers' agreements for expansion service would result in those shippers not renewing their services being provided by another pipeline. Here,

(Continued)

be the case. Guardian states that its application was prompted by a 2004 request for proposals from LDCs seeking a means to transport additional volumes.<sup>15</sup> Guardian's prospective expansion shippers will contract for approximately 93 percent of the expansion project's capacity for a 15-year term. ANR makes no showing that the expansion shippers that have entered into precedent agreements with Guardian have done so in anticipation of ceasing service currently provided by ANR. In view of this, we conclude that Guardian's proposed G-II expansion will meet a currently unfulfilled need for additional transportation capacity in a market area that is now served exclusively by ANR, i.e., the expansion volumes will be an incremental load to the area served, as opposed to an incremental load to Guardian's system.<sup>16</sup>

22. Guardian states it has acquired about 25 percent of the acreage required for the proposed G-II project.<sup>17</sup> The record demonstrates support for the proposed expansion from 85 separate entities, including trade unions, realtor associations, hospitals and health care groups, colleges and universities, businesses and chambers of commerce, and utilities. In view of this indication of support and the need for the project as evidenced by the precedent agreements, we find that on balance the economic benefits of the expansion can be expected to outweigh any harm to landowners. Nevertheless, we urge Guardian to make all possible efforts to minimize adverse impacts on landowners and to resolve easement issues outside of court.

23. In view of the foregoing, we find that Guardian's proposal satisfies the criteria discussed in the *Policy Statement on New Facilities*.

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there is no indication, aside from ANR's speculation, that any of ANR's current customers are contemplating departing from ANR in favor of Guardian. In any event, we note that NGA section 7(g) states that "[n]othing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company."

<sup>15</sup> Along with Guardian, ANR responded to the LDCs' request with a proposal to provide for additional transportation capacity.

<sup>16</sup> We concur with WPSC's assertion that the proposed expansion can be expected to enhance reliability, flexibility, and "provide additional infrastructure to eastern Wisconsin, which is currently served by only one pipeline." WPSC's *Motion to Intervene and Comments in Support*, at 3 (Nov. 13, 2006).

<sup>17</sup> Guardian's *Data Response* (August 28, 2007).



**B. Rates****1. Project Financing**

24. Guardian estimates its proposed G-II project will cost \$271,104,000. Guardian is financing the project with cash provided by its parent, ONEOK Partners, L.P. (ONEOK). Approximately 70 percent of ONEOK's cash contributions will be accounted for as inter-company debt owed by Guardian to ONEOK, and approximately 30 percent of the ONEOK cash contributions will be accounted for as equity investments in Guardian.

**2. Incremental Recourse Rates**

25. For services using the incremental G-II expansion capacity, Guardian proposes new Rate Schedules FT-2 and IT-2 and related General Terms and Conditions (GT&C) for firm and interruptible open-access transportation services under Part 284 of the Commission's regulations. The proposed rates are postage stamp rates, with a recourse reservation rate for firm transportation service based on the applicable cost of service, the design capacity of the proposed facilities, and an imputed level of interruptible service. Specifically, Guardian calculates a \$0.2205 per Dth maximum daily reservation rate and a zero firm commodity rate. Guardian also proposes a recourse rate for interruptible transportation service. Guardian calculated the \$0.2205 per Dth maximum daily interruptible rate at a 100 percent load factor of the proposed Rate Schedule FT-2 rate.

26. Guardian's application shows that the proposed cost-based rates reflect a straight fixed variable rate design. Guardian estimates a three year average cost of service of \$43,232,000, and 537,200 Dth per day in design capacity (196,078,000 Dth annually). The major components underlying Guardian's estimated annual cost of service include a 70 percent debt and 30 percent equity capital structure, with a debt cost of 7.3 percent, a 14 percent return on equity, a 9.31 percent overall rate of return, and an annual straight line depreciation accrual rate of 2.0 percent.

**3. Precedent Agreements**

27. Guardian executed three separate precedent agreements, each for a term of 15 years, with three Wisconsin LDCs. Included in the precedent agreements is a ramp down provision which states that for each year of the last four-year period of the initial term (Ramp Down Period), the MDQ shall be reduced by a certain percentage of the MDQ in effect immediately prior to the beginning of the Ramp Down Period. All three prospective expansion shippers elected an MDQ reduction right of 10 percent beginning in the 12<sup>th</sup> year of service.

28. Each of the three prospective expansion shippers has a negotiated fixed rate for each year of the initial term of the service agreement (Fixed Rate Option) as detailed below:

Fixed Rate Option Reservation Rates		
Year	Daily (\$/Dth)	Monthly (\$/Dth)
1	0.1733	5.2712
2	0.1750	5.3229
3	0.1768	5.3777
4	0.1786	5.4324
5	0.1803	5.4841
6	0.1821	5.5389
7	0.1840	5.5967
8	0.1858	5.6514
9	0.1877	5.7092
10	0.1895	5.7640
11	0.1914	5.8218
12	0.1933	5.8795
13	0.1953	5.9404
14	0.1972	5.9982
15	0.1992	6.0590

29. Expansion shippers will also pay Transporter's Use Gas, the Electric Power Cost Recovery Rate, the Annual Charge Adjustment surcharge (ACA), and any other applicable surcharges. Consistent with existing Rate Schedule FT-1, no commodity rates will be assessed under proposed Rate Schedule FT-2. Additionally, WPSC requests construction of an extra meter station, the Southwest Green Bay Meter Station, as part of the proposed G-II expansion facilities. Section 11.3 of WPSC's precedent agreement provides that it will pay an estimated incremental rate of \$0.0018/Dth, to be added to the Fixed Rate Option reservation rate to allow Guardian to recover the cost of constructing the requested meter station.

30. Guardian and its prospective expansion shippers have agreed to execute service agreements under Rate Schedule EAW with an MDQ equivalent to the effective MDQ under its corresponding Rate Schedule FT-2 service agreement. The three prospective expansion shippers will pay a negotiated rate of \$0.00/Dth for the term of their Rate Schedule EAW service agreements. Under the terms of its precedent agreement, Wisconsin Gas agrees to extend the expansion shippers' existing Rate Schedule FT-1 and

Rate Schedule EAW service agreements for a ten-year period commencing December 7, 2012, and ending December 6, 2022, at a rate of \$0.120 Dth/d and \$0.00 Dth/d, respectively.

31. Guardian has agreed to file for a new market aggregation service under proposed Rate Schedule MA. The three prospective expansion shippers have agreed to execute service agreements under the new Rate Schedule MA with an MDQ equivalent to the effective MDQ in their respective Rate Schedule FT-2 service agreements. The three shippers will pay a negotiated rate of \$0.00/Dth for the term of their respective Rate Schedule MA service agreements.

32. Under the terms of the precedent agreements, Guardian agrees to pay a certain amount to its shippers in the event the full in-service date (as defined in Article I of the precedent agreements) is delayed. The precedent agreements also contain a Creditworthiness Provision relating to the creditworthiness and financial assurances required to provide Guardian with the ability to recover the facility costs for the expansion, if the service agreements are terminated for non-payment or if a shipper fails to maintain creditworthiness. Guardian states that these provisions are consistent with the requirements of the Commission's policy statement addressing creditworthiness issues, which provides that the shippers for whom an expansion is built can be expected to provide collateral up to that shipper's proportionate share of the project's cost.<sup>18</sup>

33. Guardian seeks a determination that the EAW Service Provision, the MA Service Provision, and the Creditworthiness Provision that it has agreed to with expansion shippers are acceptable because they are not unduly discriminatory. Although we have made determinations as to whether certain non-conforming provisions in service agreements are consistent with Commission policy in other certificate proceedings,<sup>19</sup> we cannot do so here because Guardian has provided insufficient information. Specifically,

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<sup>18</sup> *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412, P 17-19 (2005).

<sup>19</sup> *See, e.g., Rockies Express Pipeline, LLC.*, 116 FERC ¶ 61,272, P 69-78 (2006) (approving negotiated rates and contractual terms offered to foundation shippers and anchor shippers); *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, P 50 (2006) (accepting provision that provides for the recovery of the costs of construction if the shipper defaults).

Guardian has not filed unexecuted copies of the service agreements that include the non-conforming provisions for our review.<sup>20</sup>

34. Guardian also states that it intends to file tariff sheets reflecting the negotiated rate agreements, identifying any material deviations or non-conforming provisions, at the time specified pursuant to the Commission's regulations or by Commission order. Since Guardian states that the negotiated rate agreements with the expansion customers will contain non-conforming provisions, Guardian must also file the executed service agreements for Commission approval as required by section 154.112 (b) of the Commission's regulations. When Guardian files its service agreements, it must comply with the Alternative Rate Policy Statement,<sup>21</sup> and the Commission's decision in *NorAm Gas Transmission Company*,<sup>22</sup> which require, among other things, that the pipeline clearly delineate the differences between the non-conforming rate agreements and its form of service agreement in redline and strikeout.

#### **4. Tariff Proposal**

35. Shippers who desire G-II expansion capacity will need to contract for firm transportation service under Guardian's Rate Schedule FT-2. Existing Rate Schedule FT-1 shippers who want to contract for G-II expansion capacity must negotiate a separate agreement under Rate Schedule FT-2 and pay the incremental reservation rate for such capacity. Further, G-II expansion shippers will pay the Transporter's Use Gas percentage, the Electric Power Cost (EPC) recovery rate, the Annual Charge Adjustment

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<sup>20</sup> If Guardian still seeks an early determination of the reasonableness of certain non-conforming provisions in its service agreement with expansion shippers, it should file public copies of the unexecuted service agreements with the non-conforming provisions in redline/strikeout within thirty days of this order. Guardian should also fully explain why the non-conforming provisions are not unduly discriminatory and consistent with Commission policy.

<sup>21</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Service of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *order granting clarification*, 74 FERC ¶ 61,194, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

<sup>22</sup> 77 FERC ¶ 61,011 (1996).

surcharge (ACA), and any other applicable surcharges as set forth in Guardian's Statement of Rates. Guardian emphasizes that because the FT-2 rate will be an incrementally designed rate for the G-II expansion capacity, existing customers will not subsidize the G-II expansion facilities.<sup>23</sup> Accordingly, Guardian will allocate the revenues collected for Rate Schedules FT-2 and IT-2 service toward G-II's separate cost of service. Guardian states that it is bearing the financial risk of the expansion by virtue of its precedent agreements having a negotiated rate lower than the reservation recourse rate.

36. Guardian asserts that the ramp down provision in its Rate Schedule FT-2 is non-discriminatory. We disagree. Guardian cites an ANR proceeding<sup>24</sup> involving similar tariff provisions for contract demand reduction rights tied to certain eligibility requirements targeting LDCs, industrial customers, and municipalities. In that proceeding, the Commission found the provisions to be in the public interest, and just and reasonable.<sup>25</sup> However, we note that in that proceeding ANR proposed to include the contract demand reduction rights as generally applicable conditions for all firm transportation pro forma rate schedules, so that all firm transportation customers would have similar rights. In this case, there is no provision in Guardian's tariff which would make this contract reduction right available to Rate Schedule FT-1 shippers on its system. We find this discriminatory, and therefore will approve the contract reduction rights if they are also made available to Guardian's Rate Schedule FT-1 customers.

37. Guardian requests the Commission approve its new Rate Schedule MA. The Rate Schedule MA provides that nominations at an MA point will only be accepted from a delivery point operator with an MA agreement. The Rate Schedule MA also determines any operational imbalances at the MA point by using the total quantity of metered deliveries for all delivery points in the MA agreement for a given gas day. All delivery point operators must enter into an operational balancing agreement at each delivery point. Guardian proposes a usage charge of \$0.02 per Dth and a minimum rate fee of \$0.00 per Dth, to cover the resources that will be utilized to facilitate this balancing service. Guardian states that these tariff provisions are similar to other provisions approved by the

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<sup>23</sup> *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 (1995).

<sup>24</sup> *ANR Pipeline Company*, 99 FERC ¶ 61,310 (2002).

<sup>25</sup> *Id.* at 3.

Commission.<sup>26</sup> The Commission finds that this provision benefits all shippers because it provides Guardian's shippers with more flexibility to manage their imbalances by adding a new optional market aggregation service. However, we will require Guardian to keep a record of revenues, volumes, and costs that are incurred in connection with this new service, and to provide this information three years from the full in-service date to provide the Commission with an accurate reflection of costs and revenues associated with this particular service.<sup>27</sup>

38. Guardian requests rolled-in rate treatment for costs associated with its proposed electric-powered compression facilities. Guardian is proposing an amendment to its Transporter's Use Gas Provision to include an Electric Power Cost (EPC) Recovery Provision to be recovered on a seasonal period basis from all transportation customers. Instead of an annual adjustment, Guardian is proposing a bi-annual adjustment; an adjustment for the seven month summer period, beginning April 1 and ending October 31; and an adjustment for the five month winter period, beginning November 1 and ending March 31. No party protested this tariff proposal, and Guardian states that it has confirmed that 99 percent of the shippers on its existing system do not oppose the rolled-in rate treatment of its electric-powered compression costs.

39. Guardian seeks Commission authorization to include costs associated with the operation of the new electric compressors in the EPC recovery rate. Because the EPC recovery rate applies to both expansion and existing shippers, combining the new electric-driven with the existing gas-fired compressor costs could alter what existing customers pay for certificated service. Thus, we reach no determination on the merits of this request in this NGA section 7 proceeding, and instead direct Guardian to seek to make this change in an NGA section 4 proceeding. This will ensure that Guardian's existing shippers have notice and an opportunity to file comments on the proposed change. Accordingly, we reject Guardian's proposal to roll-in the EPC recovery rate without prejudice to Guardian refiling the proposed change in a future section 4 proceeding.

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<sup>26</sup> Guardian cites *Northern Border Pipeline Company*, 106 FERC ¶ 61,333 (2004) and *Vector Pipeline Company L.P.*, 93 FERC ¶ 61,129 (2000).

<sup>27</sup> See *Trunkline LNG Company*, 82 FERC ¶ 61,198 (1998), *aff'd*, 194 F.3d 68 (D.C. Cir. 1999).

#### IV. Environmental Review

40. The potential environmental impacts of Guardian's proposed expansion project were evaluated in the draft and final environmental impact statements (EIS) to satisfy the requirements of the National Environmental Policy Act (NEPA).<sup>28</sup> The U.S. Army Corps of Engineers (COE); the U.S. Department of Interior, Bureau of Indian Affairs (BIA); and the Wisconsin Department of Natural Resources (WDNR) served as cooperating agencies in the preparation of the draft and final EIS.

41. The Commission approved Guardian's request to use the Pre-Filing Review Process for the proposed G-II expansion project on April 7, 2006, in Docket No. PF06-21-000. As part of our pre-filing review, on May 19, 2006 we issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Guardian Expansion/Extension Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). This notice was published in the *Federal Register*<sup>29</sup> and sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and, other interested parties.

42. In response to our NOI and three public scoping meetings held along the proposed G-II route, we received numerous written and verbal comments from landowners, concerned citizens, public officials, and government agencies concerning project impacts on land uses (e.g., farming and organic farming), wetlands and waterbodies; water quality; vegetation and wildlife; threatened and endangered species; air and noise quality; future development; property values; tribal lands and cultural resources; the overall project purpose and need; environmental justice; safety; and potential alternatives to the proposed route and planned facilities.

43. On April 25 and July 2, 2007, Guardian amended its application, revising the pipeline route in Brown and Outagamie Counties, Wisconsin, and modifying certain above ground facilities. On July 20, 2007, we issued an NOI for the amended G-II expansion proposal. Comments were submitted by DeKalb County, Illinois, and by three affected landowners who expressed concerns on permitting, future development, property values, and potential alternatives.

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<sup>28</sup> 42 U.S.C. §§ 4321-4347 (2005).

<sup>29</sup> 71 Fed. Reg. 30,131 (May 25, 2006).

44. The Commission issued a draft EIS on April 13, 2007. Public notice of the availability of the draft EIS was published in the *Federal Register*.<sup>30</sup> The draft EIS was mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors; and other interested parties (i.e., affected landowners, miscellaneous individuals, and environmental groups who provided scoping comments or asked to remain on the mailing list). In addition, affected landowners who were added to the mailing list after the NOI was issued, and landowners potentially affected by some of the alternatives under consideration, were sent the draft EIS. The public was given 45 days from the date of publication in the *Federal Register* to review and comment on the draft EIS. Three public meetings were held in the project area to solicit comments, and in addition, written and electronic comments were submitted directly to the Commission.

45. Comment letters on the draft EIS were received from federal agencies, a state agency, Guardian, an organization, and 23 individuals. In addition, verbal comments were received from 19 individuals at three public meetings held in Oconomowoc, Fond du Lac, and Green Bay, Wisconsin on May 15, 16, and 17, 2007, respectively. Concerns were raised regarding pipeline safety, impacts on future developments, drain tiles, farmland, land values, routing alternatives, zoning, water quality, forestland, and wetland mitigation.

46. The Commission issued the final EIS on October 26, 2007. Public notice of the availability of the final EIS was published in the *Federal Register*.<sup>31</sup> The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS. The distribution list is provided as Appendix A of the final EIS.

47. The final EIS considers and responds to the concerns expressed. The final EIS concludes that construction and operation of Guardian's proposed expansion project will result in limited adverse environmental impacts. Those limited impacts will be most significant during the period of construction. The final EIS finds that if constructed and operated in accordance with applicable laws and regulations, Guardian's proposed mitigation plans, and the recommended mitigation measures set forth in the final EIS, the proposed expansion project will be an environmentally acceptable action.

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<sup>30</sup> 72 Fed. Reg. 19,919 (April 20, 2007).

<sup>31</sup> 72 Fed. Reg. 62,641 (Nov. 6, 2007).



**A. Landowner Comments on the Final EIS**

48. Landowners commented on the draft and final EIS, voicing concerns about impacts on farmland,<sup>32</sup> drain tiles, future development, land values, and routing alternatives. The final EIS specifically addresses these concerns.<sup>33</sup> In response to these landowner concerns, we will require Guardian to minimize and mitigate potential affects to prime farmlands by implementing the standard requirements identified in its Agricultural Impact Management Plan (AMP) and associated best practices developed in consultation with the Wisconsin Department of Agriculture, Trade, and Consumer Protection (WDATC). Interference with surface and subsurface agricultural drainage would be minimized or avoided by grading contours to pre-existing conditions during restoration, repairing damages to tile lines,<sup>34</sup> and by placing the pipeline at least three feet deep when located adjacent to an existing pipeline and four feet deep when not adjacent to an existing pipeline within agricultural land. The AMP requires Guardian to use third-party agricultural monitors during construction, which will be overseen by DATCP. To assist Commission staff in monitoring restoration of agricultural lands, we will require Guardian to file the DATCP agricultural monitoring reports. The AMP also addresses construction procedures across and in the vicinity of Certified Organic Farms.

49. In response to concerns regarding the proposed project's potential impact on land values, we note that when Guardian filed its application, there were no specific plans or plots slated for development along the identified route in DeKalb County, Illinois, or Jefferson, Dodge, Fond du Lac, and Calumet Counties, Wisconsin. In Brown County, Wisconsin, four planned residential developments will be impacted by the proposed route, and Guardian is consulting with the developers to identify any potential conflicts. There are preliminary plans for a golf course and residential development in Outagamie County, Wisconsin, but the route will cross only a small portion of the golf course and would not directly impact any residential structures. We note that construction and

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<sup>32</sup> The project would cross 106.8 miles (about 89.7 percent of the project acreage) of agricultural lands.

<sup>33</sup> Appendix P of the final EIS includes copies of comments and letters from the public meetings, federal agencies, state agencies, companies, and individuals. Specific concerns are identified and addressed in the final EIS.

<sup>34</sup> In the event drain tiles are damaged, the final EIS describes Guardian's commitment to repair damaged tiles in accordance with its AMP.

operation of the proposed G-II pipeline would not change the general use of the land and would only preclude the construction of above ground structures within the 50-foot permanent right-of-way.

50. Jerry Criter requests the proposed pipeline be rerouted through the northwest corner of his property to more closely follow an existing powerline and to avoid a wetland within the powerline corridor. Gary and Kay Huss request the pipeline moved closer to a stream that bisects their property to avoid cutting drain tiles. To accommodate such landowner concerns, Environmental Condition No. 5 of this order<sup>35</sup> allows for minor field realignments to accommodate landowner needs and requirements, provided alterations do not affect other landowners or sensitive environmental areas such as wetlands. Both of the requested route changes appear to be the type that would be allowed without specific Commission approval. The Commission prefers that new pipelines be co-located along other existing linear infrastructure, such as powerlines and other pipelines, if feasible and environmentally preferable. Guardian should file an explanation if accommodating these minor alignments is not feasible. Commission staff will monitor any proposed realignments during construction. More significant reroutes may require Guardian to file a formal request for written approval from the Director of the Office of Energy Projects (OEP) and would require additional environmental surveys if outside of previously surveyed areas.

51. Mr. and Mrs. Huss state that Guardian's easement agreement allows it to reconstruct, alter, relocate, and enlarge its pipeline across their land. We clarify that this order only allows Guardian to construct, repair, and maintain a 20-inch diameter pipeline; thus, Guardian must seek Commission approval for any future modifications or expansions of the pipeline. Mr. and Mrs. Huss ask whether Guardian can receive a certificate if landowners do not sign an easement agreement. Provided we find the proposed project is required by the public convenience and necessity, we may issue Guardian certificate authorization without landowners' entering into easement agreements. As a result, if Guardian cannot successfully negotiate an easement agreement with a particular landowner, Guardian may rely on NGA section 7(h) to

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<sup>35</sup> See the appendix to this order.

exercise eminent domain,<sup>36</sup> and obtain an easement via a court proceeding, with the court determining the compensation to be paid by Guardian to the landowner.

52. The Freedom Sanitary District No. 1 of the town of New Freedom, Wisconsin, requests additional information on where Guardian's proposed pipeline will cross County Trunk Highway "E" in order to evaluate the impact on existing and future sanitary sewer and water main extensions. Environmental Condition No. 22 of this order requires Guardian to consult with the Freedom Sanitary District No. 1 prior to construction, which should enable the parties to avoid adverse impacts to existing facilities and develop provisions to accommodate future sanitary sewer and water main extensions.

### **B. Blasting**

53. A limited amount of blasting is anticipated along the pipeline. Geologic conditions at the proposed compressor stations and remaining above ground facility sites would not require blasting, special equipment, or techniques. We will require review and approval prior to the authorization of certain construction activities. For example, Environmental Condition No. 13 directs Guardian to establish site-specific blasting procedures to avoid or minimize impacts on residences, wells, and structures during blasting.

### **C. Water Resources**

54. The Guardian expansion project is not designed to cross any known areas associated with contaminated groundwater. However, due to landowner concerns, we are recommending that prior to construction Guardian consult the WDNR, Bureau of Drinking Water & Groundwater, to determine if the proposed G-II Project could affect arsenic levels in groundwater in Outagamie and Brown Counties, Wisconsin. In these counties, the pipeline would cross the Saint Peter Sandstone Formation, which has a high arsenic sulfide content capable of oxidizing and thus causing the arsenic to become soluble. If there is a potential effect, we also recommend that Guardian develop mitigation measures that would minimize oxidation of arsenic-containing sulfides in consultation with the WDNR, Bureau of Drinking Water & Groundwater, and file documentation of the consultation and any mitigation plans with the Secretary.

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<sup>36</sup> NGA section 7(h) states that "[w]hen any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line . . . it may acquire the same by exercise of the right of eminent domain."

55. Guardian's proposed expansion project will cross 27 perennial streams, 86 intermittent streams, and one pond. As proposed, the majority of the waterbody crossings will be accomplished using open-cut methods during periods of low flow. Horizontal directional drilling (HDD) installation techniques will be used across three waterbodies, including the Rock River, the Fox River, and Apple Creek (the Fox River and Apple Creek will be crossed simultaneously with one HDD). The Fox River is listed as containing polychlorinated biphenyl contaminated sediments in addition to mercury and elevated suspended sediments. The Rock River also has elevated mercury levels. The use of the HDD crossing method at the Rock River will prevent interaction with any contaminated sediments in the riverbed, and will allow Guardian to avoid impacting approximately 2.5 acres of forested wetland adjacent to the Rock River. Waterbody crossings will be accomplished in accordance with our required procedures and the terms of any applicable federal or state permits that may be granted.

56. Guardian does not anticipate the need for an alternative method to cross the Fox River and Apple Creek. Guardian proposes to use a dry crossing method to cross the Rock River if the HDD fails. If an alternative crossing method does need to be developed, Environmental Condition No. 15 of this order requires Guardian to consult the COE, the Environmental Protection Agency Region 5 Remedial Manager, and the WDNR Project Coordinator and file the final plan with the Secretary of the Commission for review and written approval by the Director of OEP prior to conducting any such alternative crossing.

#### **D. Threatened, Endangered, and Other Special Status Species**

57. Two federally protected species (bald eagle and eastern prairie fringed orchid) were identified as potentially occurring within the proposed G-II project area. Based on our review of known occurrences of the two federal species within the project area, we have determined that the project would have no effect on these species.

58. Twelve State of Wisconsin protected species and five Wisconsin species of special concern were identified as potentially occurring within the proposed G-II project area. Guardian has conducted habitat screening to identify appropriate habitats to focus searches for protected species that will be conducted prior to construction. If habitat is found, or species presence is verified during these investigations, Environmental Condition No. 16 of this order requires Guardian to consult with WDNR and develop mitigation strategies, if necessary.

#### **E. Land Use, Recreation, and Visual Resources**

59. Guardian's proposed G-II expansion project will cross a half mile of residential land, while 6.3 acres of residential land will be affected by construction. Two residences,

four barns, two garages, and three commercial buildings are located within 50 feet of the pipeline construction work area. Temporary construction impacts on residential areas might include inconvenience caused by noise and dust generated by construction equipment; trenching through roads or driveways; ground disturbance of lawns; removal of landscaping or natural vegetative screening; potential damage to existing septic systems or wells; and removal of above ground structures, such as sheds or trailers, from within the right-of-way. Following construction, approximately 3.1 of the 6.3 acres of residential land affected by construction will be retained as permanent right-of-way.

60. To minimize disruption to residences and businesses within 50 feet of the construction right-of-way and ensure public safety, Environmental Condition No. 17 requires Guardian to leave mature trees and landscaping along the edge of the construction work area, restore lawns and landscaping according to our Upland, Erosion Control, Revegetation, and Maintenance Plan immediately after backfilling, and fence the edge of the construction right-of-way for a distance of 100 feet on either side of a residence. For the three commercial businesses within 25 feet of the construction right-of-way, Environmental Condition No. 18 requires Guardian to develop site-specific plans.

61. The proposed Bluff Creek Compressor Station site in Walworth County, Wisconsin, will be located along Kettle Moraine Scenic Drive. Guardian has agreed to minimize the potential impacts to Kettle Moraine Scenic Drive by enclosing aboveground facilities in buildings that are similar in appearance to those of the surrounding landscape. Guardian is also committed to appropriately maintaining the grounds of its above ground facilities to ensure the safety and appearance of the overall site. Given Guardian's plans to construct buildings similar to those of the surrounding landscape and properly maintain aboveground facilities, visual impacts to this area should be minor.

62. Impacts on visual resources due to the pipeline will be short term, occurring during construction. Following construction, the right-of-way will be restored to pre-existing conditions and the farmers will be allowed to grow crops over the pipeline on agricultural lands. Within one or two years construction work areas should be difficult to distinguish from surrounding areas. Therefore, no long term visual impacts would result from construction and operation of the pipeline in non-forested areas. Environmental Condition No. 19 of this order requires Guardian to develop site-specific screening plans for each of the proposed compressor stations, and several meter stations and MLVs to ensure that the physical presence of these structures does not adversely affect viewsheds and or the aesthetics of the area and/or residences in proximity to these facilities.

**F. Cultural Resources**

63. A cultural resource survey has been conducted along approximately 92.3 miles of the proposed pipeline route, with approximately 27 miles remaining to be surveyed. Of five archaeological sites recorded within the area of potential effect, only one site was recommended as potentially eligible to the National Register of Historic Places (NRHP).

64. The Illinois State Historic Preservation Officer (SHPO) commented that the project may proceed in Illinois and has not noted any specific project effects. The Wisconsin SHPO has reviewed the initial Phase I report of the archaeological survey and will review and comment on subsequent submittals for the project as they become available.

65. To ensure compliance with the National Historic Preservation Act (NHPA), Environmental Condition No. 20 of this order requires Guardian to defer construction in Wisconsin until all cultural resource surveys, evaluation reports, and necessary avoidance or treatment plans are filed with the Secretary of the Commission. Copies of comments from the Wisconsin SHPO and interested Indian tribes on all reports and plans have been provided, and the Advisory Council for Historic Preservation (ACHP) has been given an opportunity to comment if any historic properties would be adversely affected.

**G. Noise Quality**

66. Local traffic and farming activities are the primary sources of existing noise in the rural areas where the pipeline would be located. Noise from operation of the electric-powered Bluff Creek and Sycamore compressor stations would not create a significant noise impact at the nearest noise sensitive areas (NSAs) to each station. During construction of the project, neighbors in the vicinity of the construction right-of-way will hear the daytime construction activities, but there will be no nighttime construction except during a few days at the Rock River and Fox River/Apple Creek crossings where the HDD technique would be used. Predicted noise levels due to operation of the two compressor stations and construction of the two river crossings should not exceed the 55 decibels on the A-weighted scale (dBA) day-night sound level ( $L_{dn}$ ). Guardian has stated that it will implement temporary noise mitigation measures if the 55 dBA  $L_{dn}$  level is exceeded at an NSA, or if the noise becomes an issue at either location.

67. To ensure that noise levels from the compressor stations are not significant at NSAs during operations, Environmental Condition No. 21 of the order requires Guardian to make all reasonable efforts to meet the predicted levels and to file noise surveys with the Secretary no later than 60 days after placing the compressor stations in service. If the noise attributable to the operation of compressor stations exceeds the 55 dBA  $L_{dn}$  at an

NSA, this condition also requires that Guardian install the necessary additional noise controls to meet the level within one year of the facility's in-service date.

**V. Conclusion**

68. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental impacts of the proposed project. Based on this review, we agree with the conclusion that construction and operation of the proposed G-II expansion project would result in limited adverse environmental impacts. Additionally, the final EIS included specific recommendations that we believe would further reduce the environmental impacts resulting from construction and operation of the G-II project. Therefore, we are including these recommendations as conditions to the authorization issued to Guardian in this order.

69. 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.<sup>37</sup>

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

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

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<sup>37</sup> See, e.g., *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Guardian pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, install, and operate natural gas facilities as described and conditioned herein, and as more fully described in the application, as amended and supplemented.

(B) The certificate authority in Ordering Paragraph (A) shall be conditioned on Guardian:

- (1) Completing the facilities described herein and making them available for service within one year of the issuance of this final order, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Complying with all applicable Commission regulations, including, but not limited to, paragraphs (a), (c), (e), and (f) of section 157.20;
- (3) Complying with the environmental conditions listed in the appendix to this order;
- (4) Executing, prior to construction, firm service agreements equal to the capacity level and terms of service represented in its precedent agreements;
- (5) Filing an executed copy of firm service agreements and tariff sheets identifying these agreements as non-conforming at least 30 days before the in-service date of the proposed facilities;
- (6) Notifying the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Guardian. Guardian shall file written confirmation of such notification with the Secretary of the Commission within 24 hours; and
- (7) Filing actual tariff sheets in accordance with section 154.207 of the Commission's regulations between 30 and 60 days prior to commencing service.



(C) Guardian is permitted to use its generally applicable system-wide transportation rates as initial NGA section 7 rates for service on the expansion facilities, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## APPENDIX

### Guardian Pipeline, L.L.C. Docket Nos. CP07-8-000, -001, and -002

#### Environmental Conditions for the G-II Expansion Project

As recommended in the final EIS, this authorization includes the following conditions:

1. Guardian shall follow the construction procedures and mitigation measures described in its application, as amended and supplemented (including responses to staff information requests), and as identified in the final EIS, unless modified by this order. Guardian must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the G-II project. This authority shall allow:
  - a. the modification of conditions of the Commission's order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Guardian 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 location shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the Commission staff's recommended facility locations. **As soon as they are available, and prior to the**

**start of construction**, Guardian shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000, with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Guardian'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. Guardian'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 for a pipeline to transport a commodity other than natural gas.

5. Guardian 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, and 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 **prior to construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements, which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and prior to construction**, Guardian shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Guardian would

implement the mitigation measures required by this order. Guardian must file revisions to the plan as schedules change. The plan shall identify:

- a. how Guardian 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 how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. what training and instructions Guardian 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 Commission staff to participate in the training session;
  - e. the company personnel (if known) and specific portion of Guardian's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Guardian will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or Program Evaluation Review Technique (PERT) chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Guardian shall employ one or more EIs per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative 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. Guardian shall file updated status reports with the Secretary on a **weekly** basis **until all construction-related activities, including restoration, are complete for each phase of the project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by EI 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 this order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Guardian from other federal, state or local permitting agencies concerning instances of noncompliance, and Guardian's response.
9. Guardian must receive written authorization from the Director of OEP **before commencing service** of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Guardian 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 Guardian 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. Guardian shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation

problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Guardian shall mail the complaint procedures to each landowner whose property would be crossed by the project.

- a. In its letter to affected landowners, Guardian shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that, if they are not satisfied with the response, they should call Guardian's Hotline; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that, if they are still not satisfied with the response from Guardian's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or [hotline@ferc.gov](mailto:hotline@ferc.gov).
  - b. In addition, Guardian shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
    - (1) the date of the call;
    - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by milepost;
    - (3) the description of the problem/concern; and
    - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. Guardian shall file copies of the third-party agricultural monitoring reports with the Secretary **when Guardian receives these reports from the Department of Agriculture, Trade, and Consumer Protection.**
  13. **Prior to construction**, Guardian shall file with the Secretary for review and approval by the Director of the OEP a blasting plan detailing the procedures to be used during blasting to prevent the introduction of blast rock into agricultural lands, and prevent damage to surrounding areas, wells, and/or structures.
  14. **Prior to construction**, due to landowner concerns, Guardian shall consult the Wisconsin Department of Natural Resources, Bureau of Drinking Water & Groundwater to determine if the G-II project could affect arsenic levels in groundwater in Outagamie and Brown Counties. If there is a potential effect, Guardian shall develop mitigation measures that would minimize oxidation of arsenic containing sulfides in consultation with the Wisconsin Department of Natural Resources (WDNR), Bureau of Drinking Water & Groundwater and file documentation of the consultation and any mitigation plans with the Secretary.

15. In the event the planned horizontal directional drilling crossing of the Fox River, Apple Creek, and/or Rock Rivers fail, Guardian shall develop final alternative crossing plans in consultation with the U.S. Army Corps of Engineers, the Environmental Protection Agency Region 5 Remedial Manager, and the WDNR Project Coordinator. The final alternative crossing plans shall be filed with the Secretary for review and for written approval from the Director of the OEP **prior to conducting any such alternative crossing.**
16. If a state-protected species or its habitat are found within the proposed construction right-of-way or construction work areas, Guardian shall consult with WDNR regarding survey methodology, and develop mitigation plans, if necessary, to avoid or minimize impacts to that species. Guardian shall file the results of any state-threatened and endangered species surveys (including survey methodology) and mitigation plans with the Secretary **prior to construction.**
17. For all residences and commercial buildings within 50 feet of the construction work area Guardian shall:
  - a. leave mature trees and landscaping within the edge of the construction work area, unless necessary for safe operation;
  - b. restore all lawn areas and landscaping within the construction work area consistent with the requirements of our Upland, Erosion Control, Revegetation, and Maintenance Plan immediately after backfilling the trench; and
  - c. fence the edge of the construction work area adjacent to the residence for a distance of 100 feet on either side of the residence to ensure that construction equipment and materials, including the spoil pile, remain within the construction work area.
18. For all commercial buildings closer than 25 feet to the construction work area, **prior to construction** Guardian shall file with the Secretary for review and approval of the Director of OEP a site-specific plan that includes:
  - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustments, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and a site plan that shows:
    - (1) the location of the commercial building in relation to the new pipeline and, where appropriate, the existing pipelines;
    - (2) the edge of the construction work area;
    - (3) the edge of the new permanent right-of-way; and
    - (4) other nearby residences, structures, roads, or waterbodies.

- b. a description of how Guardian would ensure that the trench is not excavated until the pipe is ready for installation and that the trench is backfilled immediately after installation.
19. **Prior to construction**, Guardian shall file site-specific screening plans for the Sycamore and Bluff Creek Compressor Stations; the Sheboygan, Chilton, Southwest Green Bay, and West Green Bay Meter Stations; MLVs 12, 13, and 14; and the valve at the end of the Denmark Branch Line with the Secretary for review and approval of the Director of OEP.
20. To ensure that the Commission's responsibilities under the National Historic Preservation Act and its implementing regulations are met, Guardian shall defer construction of facilities, including the use of staging, storage, and temporary work areas, and new or to be improved access roads **until**:
  - a. Guardian files with the Secretary all additional required cultural resource inventory and evaluation reports, and necessary avoidance or treatment plans;
  - b. Guardian files copies of comments from the Wisconsin State Historic Preservation Officer and interested Indian tribes on all reports and plans;
  - c. the Advisory Council on Historic Preservation has been provided an opportunity to comment if any historic properties would be adversely affected; and
  - d. the Director of OEP reviews and approves all reports and plans and notifies Guardian in writing that it may proceed with treatment or construction.

All material filed with the Commission that **contains 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.**"

21. To ensure that there will be no excessive impacts to noise quality at the nearest noise sensitive areas (NSAs) as a result of compressor station operations, Guardian shall make all reasonable efforts to ensure its predicted noise levels from the compressor stations are not exceeded at NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the compressor stations in service. If the noise attributable to the operation of compressor stations exceeds 55 dBA  $L_{dn}$  at an NSA, Guardian shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Guardian shall confirm compliance with these requirements by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
22. **Prior to construction**, Guardian shall consult with the Freedom Sanitary District



No. 1, Town of New Freedom, Wisconsin, to develop provisions to accommodate future sanitary sewer and water main extensions in the vicinity of County Trunk Highway "E." Guardian shall file documentation of the consultation with the Secretary.