121 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transwestern Pipeline Company, LLC Docket Nos. CP06-459-000

El Paso Natural Gas Company CP07-9-000
(Not Consolidated)

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued November 15, 2007)

1. On September 15, 2006, in Docket No. CP06-459-000, Transwestern Pipeline Company, LLC (Transwestern) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity to construct and operate its proposed Phoenix Expansion Project. The proposed expansion will enable Transwestern to transport up to 500,000 Dekatherms of natural gas per day (Dth/d) from the San Juan Basin, located in southern Colorado and northern New Mexico, to markets in central and southern Arizona. Transwestern proposes to construct and operate approximately 25 miles of 36-inch diameter pipeline that will loop two sections of Transwestern's existing San Juan Lateral in San Juan and McKinley Counties, New Mexico (the San Juan Loops A and B), and 95 miles of 42-inch diameter pipeline and 164 miles of 36-inch diameter pipeline (the Phoenix Lateral) that will extend from Transwestern's existing mainline near Ash Fork, Arizona, to El Paso Natural Gas Company's (El Paso) existing East Valley Lateral near Coolidge, Arizona. The East Valley Lateral continues approximately 36 miles and terminates south of Phoenix. As part of its proposed Phoenix Lateral, Transwestern plans to purchase a portion of El Paso's ownership interest in the East Valley Lateral.

2. On October 16, 2006, in Docket No. CP07-9-000, El Paso filed an application pursuant to NGA section 7(b) for permission and approval to abandon by sale to Transwestern up to 70 percent of its ownership interest in the East Valley Lateral, *i.e.*, up to 242,500 Dth/d of the East Valley Lateral's current capacity of 342,000 Dth/d.

3. For the reasons discussed below, the Commission will issue Transwestern's requested certificate authorization and El Paso's requested abandonment approval, as conditioned herein. Further, we reach a predetermination that Transwestern may roll the costs of its proposed San Juan Loops A and B into its existing Rate Schedule FTS-4 rates in its next NGA section 4 rate proceeding, provided there are no significant changes in the relevant facts and circumstances associated with the project. Granting the requested authorizations should permit additional, competitively-priced gas supplies to reach a rapidly growing region.

I. Background and Proposal

4. El Paso transports gas from production areas in New Mexico, Colorado, Texas, and Oklahoma to markets in California, the southwestern United States, and northern Mexico via approximately 11,000 miles of pipeline. In 2006, El Paso was granted certificate authorization to acquire the East Valley Lateral, a 36.72-mile long, 24-inch diameter pipeline located in Pinal County, Arizona, from the Salt River Project Agricultural Improvement and Power District (Salt River).[1] Effective May 25, 2006, El Paso took custody of the East Valley Lateral and integrated it into its NGA jurisdictional interstate system. El Paso now seeks approval to abandon up to 70 percent of its ownership interest in the East Valley Lateral to Transwestern.

5. Transwestern transports gas drawn from the San Juan, Anadarko, and Permian Basins to markets in the Midwest, Texas, Arizona, New Mexico, Nevada, and California via approximately 2,500 miles of pipeline. Transwestern also has indirect access to Rocky Mountain gas supplies through interconnections with other interstate pipelines. Transwestern proposes to expand its system by constructing 25 miles of 36-inch diameter pipeline in New Mexico, 259 miles of 36-inch and 42-inch diameter pipeline in Arizona, and acquiring an interest in the East Valley Lateral.

6. In northwest New Mexico, Transwestern plans to loop two sections of its existing San Juan Lateral. One segment, Loop A, will extend from Milepost (MP) 0.0 at the

[1] *See El Paso*, 115 FERC ¶ 61,074 (2006). Salt River constructed the East Valley Lateral in 2004. Salt River, a political subdivision of the State of Arizona organized in 1937 under the laws of the State of Arizona, is an agricultural improvement district.

existing Bloomfield Compressor Station to MP 8.9 in San Juan County, New Mexico; the second segment, Loop B, will extend from MP 71.9 to MP 87.8 in McKinley County, New Mexico. Transwestern states this looping – in conjunction with modifications to existing compressors and the installation of ancillary facilities – will allow it to move an additional 375,000 Dth/d from the Blanco Hub in San Juan County, New Mexico, to an interconnection with its mainline near Gallup, New Mexico.

7. In Arizona, Transwestern plans to construct 95 miles of 42-inch diameter pipeline and 164 miles of 36-inch diameter pipeline. Transwestern intends to install facilities to accommodate 12 delivery stations, customer laterals, and three taps for future interconnects along the length of its proposed pipeline, and states the pipeline will have a capacity of 500,000 Dth/d. This proposed Phoenix Lateral will commence at Transwestern's existing mainline near Ash Fork in Yavapai County, Arizona, extend through Coconino and Maricopa Counties, Arizona, and terminate at an interconnection with the East Valley Lateral near Coolidge in Pinal County, Arizona. The East Valley Lateral runs north to Gilbert, Arizona (just south of Phoenix), and has a capacity of 342,500 Dth/d.

8. El Paso's 2006 acquisition of the East Valley Lateral is subject to two transferable repurchase options.[2] The first option permits Salt River, or its assignee, to repurchase from El Paso an undivided ownership interest in the East Valley Lateral equal to 203,500 Dth/d of capacity. The second option permits Salt River, or its assignee, to repurchase from El Paso an additional undivided ownership interest equal to 39,000 Dth/d of capacity. If both options are exercised, El Paso will retain an ownership interest of at least 100,000 Dth/d, through which it will provide transportation services to Salt River and other customers. If neither option is exercised, El Paso will retain full ownership of the East Valley Lateral.

9. Transwestern intends to acquire, as Salt River's assignee, one or both of the ownership interests in the East Valley Lateral. However, pursuant to agreements with Salt River and El Paso, Transwestern can only do so between the time it accepts a certificate for its proposed Phoenix Expansion Project and no less than 90 days before it

[2] Article 4 of the Purchase and Sale Agreement between Transwestern, Salt River, and El Paso describes the parties' purchase options. *See* El Paso's *Application,* Exhibit U, at 3-5 (Oct. 16, 2006) and Transwestern's *Application*, Exhibit R, at 3-4 (Sept. 15. 2006).

places its new Phoenix Lateral in service.[3] Transwestern states that its ability to transport gas over the East Valley Lateral is an integral part of the design of its proposed expansion, and thus seeks Commission authorization to acquire an ownership interest in the East Valley Lateral and include the acquisition cost in its new Rate Schedule FTS-5 rates for expansion transportation service.

10. Transwestern estimates that its proposed expansion project's costs will be $72 million for looping its existing San Juan Lateral and $640 million for the Phoenix Lateral (including the anticipated cost to acquire capacity on the East Valley Lateral). Transwestern asserts that its proposed expansion project will permit it to transport additional gas supplies to meet growing demand in the Phoenix region. In December 2004, Transwestern held an open season,[4] following which it executed precedent agreements for firm service with five prospective customers: Salt River, Arizona Public Service Company (Arizona Public Service), Southwest Gas Corporation (Southwest Gas), UNS Gas, Inc. (UNS Gas), and Gila River Power, L.P. (Gila River); these commitments represent 74 percent of the capacity of the proposed Phoenix Lateral and 99 percent of the capacity of the proposed San Juan Loops A and B.[5]

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[3] The Purchase and Sales Agreement specifies that the options cannot be exercised until April 1, 2008, which is when the primary term of a new transportation agreement between El Paso and Salt River expires. Prior to April 30, 2010, the repurchase option can be exercised upon 90 days written notice to El Paso; thereafter, a one year written notice period will apply. *Id.*, at 4-5. May 2008 is the earliest date that Transwestern contemplates it might complete construction of its proposed Phoenix Lateral.

[4] Concurrent with the December 2004 open season, Transwestern sought binding written capacity turnback requests from Rate Schedule FTS-1 shippers with a primary path from the Blanco Hub area to delivery points west of Thoreau and from Rate Schedule FTS-4 shippers with a primary path from the Blanco Hub area to Thoreau. Transwestern states it did not receive any requests to turn back San Juan Basin receipt capacity, but did receive two offers to turn back mainline capacity. However, based upon current and future unsubscribed mainline capacity and current subscription levels for the proposed Phoenix Lateral, Transwestern determined that the turnback capacity was not needed to support its proposal.

[5] The agreements with Salt River, Arizona Public Service, Southwest Gas, and UNS Gas are for a term of 15 years. The agreement with Gila River is for a term of 4 years.

II. Notice and Interventions

11. Public notice of El Paso's application in Docket No. CP07-9-000 was published in the *Federal Register* on October 30, 2006.[6] Timely unopposed motions to intervene were filed by Arizona Public Service, El Paso Electric Company, El Paso Municipal Customer Group,[7] Salt River, Southwest Gas, and UNS Gas.[8]

12. Public notice of Transwestern's application in Docket No. CP06-459-000 was published in the *Federal Register* on September 27, 2006.[9] Timely unopposed motions to intervene were filed by 48 parties.[10] Untimely motions to intervene were filed by eight parties, which we will grant, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties thereto.

III. Additional Submissions in the Transwestern Proceeding in Docket No. CP06-459-000

A. Motion for a Full Evidentiary Hearing

13. The Town of Buckeye, Arizona (Buckeye), CSW Sun Valley Holdings, L.L.C. (CSW Sun Valley), and Sun Valley Assemblage, L.L.C. (Sun Valley Assemblage) request the Commission initiate a full evidentiary hearing to address issues raised by the application. Mainspring Casa Grande, LLP jointly with Miller & White 815, LLP and

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[6] 71 FR 63290 (Oct. 30, 2006).

[7] This group, each of which is both an El Paso shipper and a natural gas distributor, is composed of the City of Mesa, Arizona; the City of Safford, Arizona; the City of Benson, Arizona; the City of Willcox, Arizona; the City of Las Cruces, New Mexico; the City of Socorro, New Mexico; the City of Deming, New Mexico; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

[8] 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 (2007).

[9] 71 FR 56514 (Sept. 27, 2006).

[10] The parties to the Transwestern proceeding are listed in Appendix A. Comments on the proposal were submitted by UNS Gas and Lyle Anderson Development Company, Inc.

Anderson & Miller 694, LLP (Mainspring) support this request. Buckeye alternatively requests the Commission reject Transwestern's application as incomplete and/or inaccurate.[11] Buckeye contends that there has been insufficient consideration of: alternative routes; short- and long-term impacts on planned residential communities astride the proposed route; impacts on desert vegetation, wildlife and wildlife habitat; and mitigation measures. Buckeye claims that it has been denied the opportunity to meaningfully comment on these issues due to Transwestern's failure to address such issues in its application and the Commission's failure to hold a public information or scoping meeting in Buckeye. Buckeye questions the need for the gas that the proposed Phoenix Lateral will provide and suggests that additional gas may cause deterioration in the air quality of Maricopa County, Arizona, portions of which are designated as nonattainment areas by the U.S. Environmental Protection Agency (EPA).

14. Stardust-Tartesso W-12 Inc. (Stardust-Tartesso) jointly with Pulte Home Corporation (Pulte) similarly request that the Commission initiate an evidentiary hearing, or barring that, reject Transwestern's application as incomplete and/or inaccurate. Alternatively, Stardust-Tartesso and Pulte request the Commission withdraw its Environmental Impact Statement (EIS) in order to more fully review impacts associated with the proposed route and project alternatives. They assert that an evidentiary hearing is necessary to explore material issues of fact that cannot be resolved on the basis of the record due to Transwestern's submission of "so much demonstrably false and misleading information."[12] For example, Stardust-Tartesso and Pulte state that in its application Transwestern misrepresented the proposed route as avoiding residential subdivisions with immediate development plans. The parties complain that Transwestern has not given adequate consideration to alternative routes. They request the Commission convene an evidentiary hearing to review issues related to the safety of the proposed route and to

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[11] Buckeye is located approximately 35 miles west of Phoenix. Buckeye states the town contains a 600 square mile municipal planning area, within which it has approved 30 master-planned communities, which upon completion will include almost 400,000 single-family homes. Buckeye declares that "[t]here is no area in the United States that expects more construction and development over the next decade than Buckeye, Arizona." Buckeye's *Comments on the Final EIS and Response to Comments on the Draft EIS*, at 12 (Oct. 18, 2007). Buckeye and owners, developers, and builders of the planned communities object to siting the proposed Phoenix Lateral through Buckeye.

[12] Stardust-Tartesso's and Pulte's *Motion to Withdraw the Draft EIS and Strike Transwestern's Application, or alternatively, Motion for an Evidentiary Hearing*, at 2 (Sept. 14, 2007).

compare the construction and maintenance costs, as well as the economic impacts, of the proposed and the alternative routes.

15. WVSV Holdings, L.L.C. (WVSV Holdings) supports Buckeye's request, asserting that a forum permitting discovery and cross-examination is needed to assess the risk of routing a gas pipeline through an area scheduled for rapid residential development; determining a prudent minimum burial depth for the pipeline; and establishing a prudent minimum distance to separate the pipeline from people living and working adjacent to the right-of-way.

16. Waste Management Arizona Landfills, Inc. (Waste Management) supports Buckeye's request, complaining that Transwestern has not been forthcoming with necessary information. Waste Management stresses that Transwestern has not taken into account the expense and hazard associated with routing its proposed pipeline across an active waste disposal landfill site.

B. Commission Response

17. We find the paper hearing documented by the written record in this proceeding has provided an adequate forum for reviewing and resolving the issues raised by Stardust-Tartesso and Pulte, Buckeye, and parties supporting Buckeye. The parties seeking the rejection of Transwestern's application, or alternatively, a full evidentiary hearing, have had the opportunity to bring issues of concern to the attention of the Commission, and have done so in the pre-filing process and in the course of the development of the EIS. We find that interested persons have not been precluded from presenting concerns in this proceeding as a result of a faulty notice procedure. Similarly, we find that Transwestern has described its proposal, in its application and in response to data requests, in sufficient detail to allow for meaningful comments on the particulars of its proposal. To the extent that the proposal has changed since the initial application was filed and more accurate information has been presented, the Commission has sought to ensure the public had notice of such modifications as well as a reasonable time to respond. Accordingly, we believe that the public has been offered an opportunity to challenge and correct statements in the application and in subsequent Transwestern submissions.

18. In particular, we find that the public was not prejudiced by the timing, notice, or location of meetings held to discuss Transwestern's proposed expansion. We note a technical conference was held in Buckeye on December 14, 2006, as well as a public meetingon June 6, 2007. Each of the issues specified by the parties seeking a full evidentiary hearing is addressed in the EIS or in this order; thus, we find no cause to adopt the Stardust-Tartesso and Pulte proposal that we withdraw our EIS. We have taken into account and responded to comments on the draft and final EIS.

19. An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record.[13] In this case, we find the issues identified by Buckeye, Stardust-Tartesso, and Pulte, as well as those additional issues identified by parties supporting the request for an evidentiary hearing, may be resolved on the basis of the existing record. These issues are addressed below. Accordingly, we find no need for a full evidentiary hearing.

C. Protests

20. Protests that object to routing the proposed Phoenix Lateral through areas of existing or anticipated residential development were filed by Buckeye; the City of Casa Grande, Arizona (Casa Grande); CSW Sun Valley; Cherry Properties, L.L.C. (Cherry Properties); Desert Creek, LLC jointly with Buckeye 1680, LLC, and Buckeye Hassayampa, LLC (Dessert Creek); Gilligan Sun Valley, L.L.C. jointly with JPC Sun Valley, L.L.C. and WLAD Sun Valley, L.L.C. (Gilligan Sun Valley); Hacienda Builders; Kenneth and Paula Hawkins; Homelife Communities Group of Arizona (Homelife); Michael and Jo Lynn Kring; Land Baron Investments; Mainspring ; Miller Holdings, Inc. (Miller Holdings); Pinal County, Arizona; Shirley Ann Porter; Pulte; Lee and Vicki Redepenning; Randall and Katherine Smith; Stardust-Tartesso; Sun Valley Assemblage,; Rick Sutter; Michael and Jenette Sweeney; Trend Homes; and WVSV Holdings.[14]

21. El Paso objects to a suggested alternative routing in Pinal County that would place Transwestern's proposed Phoenix Lateral adjacent to existing El Paso pipelines and within El Paso's existing right-of-way. El Paso contends that such placement would create safety and operational difficulties both during and after construction.

22. Waste Management urges routing the pipeline around the southern border of the Northwest Regional Landfill, rather than bisecting it, as Transwestern proposes.[15]

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[13] *See, e.g., Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); and *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

[14] Southern California Gas Company and San Diego Gas & Electric Company jointly submitted, then jointly withdrew, a protest.

[15] As discussed below, we will adopt Waste Management's proposed alternative route.

23. William C. Brady, a landowner along the proposed Phoenix Lateral's right-of-way, and Keith A. and Barbara J. Guther, landowners residing in Dewey, Arizona, object to Transwestern's manner of presenting its offer of compensation and the substance of its offer.

D. Issues of Concern

24. In addition to protests, comments have been submitted that express concerns about, or state objections to, aspects of the proposed project. These commentors do not, however, formally protest the project as a whole.

25. Indicating a preference for an alternative route that would avoid placing the pipeline through Buckeye are: Governor of Arizona Janet Napolitano; Senator to the Congress of the United States Jon Kyl; Arizona Representatives to the Congress of the United States Trent Franks and Raul M. Grijalva; Arizona State Senators Marsha Arzberger and Robert Blendu; Arizona State Representatives Manuel V. Alvarez, Judy M. Burges, Jennifer J. Burns, and John Nelson; Mayor of El Mirage, Arizona, Fred Waterman; Mayor of Glendale, Arizona, Elaine M. Scruggs; Mayor of Litchfield Park, Arizona, Thomas L. Schoaf; Mayor of Peoria, Arizona, Bob Barrett; Mayor of Youngtown, Arizona, Michael LeVault; and Member of the Board of Supervisors of Maricopa County, Arizona, Mary Rose Garrido Wilcox. John Nelson and Bob Barrett question whether it is appropriate to use gas to fuel electric power plants sited in Arizona that are likely to export a significant portion of their output to California.

26. Lennar Communities Development, Inc. (Lennar) has interests in land in Buckeye that would be crossed by the proposed route and expresses its concern regarding impacts the proposed pipeline could have on its plans for the development of its property interests.

E. Commission Response

27. The above-noted protests and comments primarily focus on environmental issues associated with locating a natural gas pipeline in a residential area. El Paso, Waste Management, Mainspring, William C. Brady and Keith A. and Barbara J. Guther raise issues that similarly focus on aspects of the proposed route, such as the potential drawbacks to placing a the pipeline within an existing utility corridor. These issues were considered and addressed in the context of the Commission's environmental analysis. We revisit these issues as warranted in the section below that describes our environmental review.

IV. Discussion

28. Because El Paso's application pertains to facilities used to transport natural gas in interstate commerce, the requested abandonment is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b).

29. Because Transwestern's application pertains to facilities to be used to transport natural gas in interstate commerce, the requested acquisition, construction, and operation of such facilities are subject to the jurisdiction of the Commission and the requirements of NGA section 7(c).

A. El Paso's Requested Abandonment in Docket No. CP07-9-000

1. Public Convenience or Necessity

30. In considering El Paso's application, our concern is whether the requested abandonment could upset current customers' expectations of continued service. This possibility was addressed in our order granting El Paso's request to acquire the East Valley Lateral. In that proceeding, to ensure the fulfillment of El Paso's customers' service commitments, El Paso implemented tariff provisions to provide for short-term service in the event a repurchase option is exercised. Under the terms of its tariff provisions, El Paso will provide service for up to six months to customers, other than Salt River, using a portion of the 242,500 Dth/d of capacity that is subject to repurchase. These short-term transportation agreements terminate no later than El Paso's effective date of abandonment, with no right of first refusal.[16] In view of the above, and El Paso's retention of a minimum of 100,000 Dth/d of capacity on the East Valley Lateral to serve Salt River and other customers, El Paso states it will be able to meet its jurisdictional service commitments if the repurchase options are exercised. Accordingly, we find the public convenience or necessity permit El Paso's requested abandonment.[17]

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[16] 115 FERC ¶ 61,074, at P 30 (2006).

[17] In this case the proposed abandonment will ultimately effect a transfer of ownership interest between two jurisdictional entities. Further, the transfer of ownership interest raises no environmental issues. An abandonment of facilities by sale that involves only minor or no ground disturbance qualifies under section 380.4(31) of the Commission's regulations for categorical exclusion from the need for environmental review.

2. Tariff Revisions

31. El Paso proposes to revise its tariff to remove certain provisions incorporated when it acquired the East Valley Lateral in the event both repurchase options are exercised, because the provisions would then no longer be relevant.[18] We will approve El Paso's proposal, and direct El Paso to remove the subject tariff provisions if both repurchase options are exercised. However, if only one of the two options is exercised, the provisions will be retained.

3. Accounting

32. The Purchase and Sale Agreement, Article 4.1, provides for 70 percent of the capacity of the East Valley Lateral to be repurchased for the agreed upon purchase price of $14,000,001.[19] We find El Paso's proposed accounting[20] is not in accordance with the provisions of Gas Plant Instruction No. 5F (GPI 5F) in Part 201 of the Commission's regulations.

33. GPI 5F provides that when an operating unit or system is sold, the book cost of the property sold must be credited to the appropriate utility plant accounts, including amounts carried in Account 114, Gas Plant Acquisition Adjustments, with contra entries to Account 102, Gas Plant Purchased or Sold. Further, the amounts carried with respect thereto in the accounts for accumulated provision for depreciation and amortization are to be charged to such accounts, with contra entries made to Account 102. Finally, unless otherwise ordered by the Commission, the difference, if any, between (a) the net amount of debits and credits and (b) the consideration received for the property (less commissions and other expenses of making the sale), is to be included in Account 421.1, Gain on Disposition of Property, or Account 421.2, Loss on Disposition of Property.

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[18] Specifically, El Paso proposes to delete sections 20.16(g) and 20.21 of its tariff. Section 20.16(g) provides that no right of first refusal applies to firm capacity subject to repurchase associated with the East Valley Lateral. Section 20.21 provides that El Paso will not contract for firm transportation service using capacity subject to repurchase for a term longer than six months.

[19] *See* note 2.

[20] *See* El Paso's *Application*, Exhibit Y (Oct. 16, 2006).

34. Under El Paso's proposed accounting, amounts removed from the utility plant accounts and charged to the accumulated provision for depreciation and amortization accounts are not based upon the 70 percent of capacity expected to be sold. Rather, El Paso allocates the purchase price of the facilities sold proportionately to the applicable accounts, thereby improperly removing only 42 percent of the original cost of the lateral from the utility plant accounts.[21] Under the circumstances, the portion of the original cost of the East Valley Lateral that is attributable to the ownership interest in the lateral abandoned by sale to Transwestern should be based on the percentage of the capacity of the East Valley Lateral that will be sold – *i.e.*, 70 percent – assuming both of the repurchase options are exercised. Because El Paso's proposed accounting does not reflect this method, it fails to recognize an estimated $8,866,367 loss on the sale of the facilities to Transwestern as required by GPI 5F. Finally, El Paso's proposed accounting does not use Account 102 to record the proposed transaction as required by GPI 5F.

35. The Commission directs El Paso to revise its accounting to comply with GPI 5F and Account 102, as discussed above, and to file its final journal entries to clear Account 102 no later than six months after the completion of the transaction.[22] The filing must provide a complete narrative explanation of the proposed accounting and be of such detail as to show the complete transaction and all accounts affected, including related income tax accounts.

B. Transwestern's Requested Certificate Authorization in Docket No. CP06-459-000

1. Policy Statement on New Facilities

36. 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.[23] In this policy statement, we establish

[21] El Paso calculates a ratio to determine the portion of the original cost of the lateral that is to be attributed to the ownership interest abandoned by sale to Transwestern. This ratio is the agreed upon $14,000,001 sale price divided by the net book value of the East Valley Lateral of $33,295,779 in September 2006.

[22] 18 C.F.R. Part 201 (2007).

[23] *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).

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.

37. 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 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.

2. Comments and Commission Response

38. Transwestern has demonstrated a need for its proposed expansion project by submitting precedent agreements for firm service for 370,000 Dth/d, representing 74 percent of the capacity of the proposed Phoenix Lateral and 99 percent of the capacity of the proposed San Juan Loops A and B, with 345,000 Dth/d of this to be committed for a 15-year term. Several parties challenge this showing of need, questioning both whether the market will be able to absorb the increased volumes of gas and whether the primary beneficiary of the additional gas-fueled electric power will be the residents of Arizona or of California.[24]

39. The Commission views Transwestern's precedent agreements, as well as its willingness to bear the financial risk of its proposed project, as evidence that there will be sufficient end-use consumption for the gas it plans to transport to the Phoenix market

[24] *See, e.g.,* Buckeye's *Motion for an Evidentiary Hearing, or alternatively, to Strike Transwestern's Application*, at 4-5 (Aug. 8, 2007) and *Comments on Final EIS,* at 8 (Oct. 18, 2007).

area. In addition, as noted in the EIS: (1) the population of metropolitan Phoenix grew by 34.2 percent between 1990 and 2000, the fastest growth rate among the ten largest U.S. cities during that time, and (2) between 2000 and 2004, Arizona's average yearly increase in gas consumption was 15 percent.[25] While future rates of growth remain uncertain, there is no indication the trend in increased population growth and gas consumption will abate.

40. Comments assert that Transwestern will supply gas to fuel electric power plants in Arizona that will then send a portion of their output to California. Commentors, however, do not challenge the southwest's need for additional electric power. The issue of where electric power plants are located and where electricity produced by those plants is ultimately consumed is beyond the scope of this proceeding. Our jurisdiction under the NGA is limited to determining whether Transwestern's proposed expansion will provide sufficient pipeline capacity to meet a demonstrated need.

41. Gas production from the San Juan and Rocky Mountain Basins is more than adequate to fill the capacity of Transwestern's proposed expansion project, and Transwestern has shown there is a need for additional gas to supply the Arizona market the proposed project will serve. The precise volume of gas needed to meet the increasing market need is, inherently, a matter of some speculation. In this case, Transwestern has demonstrated long term, firm service commitments for a substantial portion of its proposed expansion's capacity, and will be motivated to make maximum use of new capacity to ensure project revenues exceed project costs.

42. Several commentors ask that we consider the equity of burdening Arizona with the potential adverse environmental impacts of electric generation for which Arizona will receive no offsetting benefit, citing Executive Order 12898.[26] Although this Executive Order is not binding on the Commission, we have nonetheless examined the proposed project to ensure it does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. As part of our

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[25] *See Final EIS, Volume I,* at 1-2 (Sept. 21, 2007).

[26] Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 FR 7629 (Feb. 16, 1994), states that specified federal agencies shall make achieving environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minorities and low-income populations. The Commission is not among the specified agencies, hence the Executive Order is not binding on the Commission.

consideration of this issue, the public, regardless of economic status and ethnicity, was given the opportunity to comment on the project, both in written submissions to the Commission and in public meetings held in affected locations. Our examination led us to conclude that Transwestern's proposed expansion will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations. We affirm the final EIS' conclusion that "project construction would provide some short-term job opportunities" and "[t]he only long term socioeconomic effect of the project is likely to be beneficial, based on the increase in tax revenues that would accrue to the counties affected by the project."[27]

3. Public Convenience and Necessity Determination

43. We find Transwestern's existing customers will not subsidize the proposed expansion. Further, we find the proposed expansion will not adversely impact other pipelines or their customers because the expansion is designed to bring new incremental supplies to a market that is currently served by a single interstate natural gas company.[28] Finally, we find the proposed expansion's detrimental impact on landowners will be outweighed by the benefit of making an additional source of competitively priced gas available to the growing Arizona market. Therefore, consistent with our *Policy Statement on New Facilities*, we find that Transwestern's proposed expansion is required by the public convenience and necessity. Having determined that the proposed project's anticipated benefits will outweigh the adverse effects on economic interests, we consider whether the proposed project will have significant adverse impacts on the human environment. For the reasons discussed below, we find Transwestern's proposed expansion will be an acceptable environmental action, provided its construction, maintenance, and operation conform to the conditions imposed herein.

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[27] *Final EIS, Volume I,* at 4-172 (Sept. 21, 2007). Air emissions associated with gas-fueled electric power plants are discussed below.

[28] UNS Gas declares it is the only entity regulated by the Arizona Corporation Commission that is not supplied with natural gas exclusively by El Paso, as it already has access to supplies delivered by Transwestern. UNS Gas states that the availability of Transwestern as a competitive alternative has resulted in enhanced service reliability and flexibility. UNS Gas characterizes Transwestern's proposal as consistent with the Arizona Corporation Commission's Dec. 18, 2003 policy statement encouraging the development of natural gas infrastructure in the state. UNS Gas' *Comments* (June 19, 2007).

4. Accounting

44. Transwestern proposes to acquire an undivided interest in the East Valley Lateral through options to buy from El Paso (1) 203,500 Dth/d of capacity for $14 million, and (2) 39,000 Dth/d of capacity for $1. Transwestern intends to account for its acquisition by debiting Account 101, Gas Plant in Service, with the $14,000,001 purchase price paid to El Paso.[29]

45. Based upon the information provided, we find Transwestern's accounting treatment is inconsistent with the requirements of the Uniform System of Accounts (USofA). Gas Plant Instruction No. 5 (GPI 5)[30] specifies that if gas plant facilities are acquired that constitute an operating unit or system, the plant facilities must be accounted for consistent with the Commission's original cost concept. Thus, the original cost that El Paso incurred to obtain its interest in the East Valley Lateral must be charged to the appropriate utility plant accounts. In addition, the accumulated provision for depreciation associated with the original cost must be credited to Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, with contra entries made to Account 102, Gas Plant Purchased or Sold.[31] Any difference between the purchase price and the depreciated original cost of the East Valley Lateral interest must be recorded as an acquisition adjustment in Account 114, Gas Plant Acquisition Adjustments.[32]

46. Transwestern's proposed accounting does not account for the accumulated depreciation from the time El Paso acquired its interest in the East Valley Lateral to the time Transwestern acquires its interest in the East Valley Lateral. Therefore, Transwestern must: (1) revise its proposed accounting by crediting Account 108 for the depreciation previously accumulated by El Paso, and (2) record an acquisition adjustment in Account 114 for the difference between its purchase price and the depreciated book value.

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[29] *See* Transwestern's *Application*, Exhibit S (Sept. 15, 2006).

[30] 18 C.F.R. Part 201 (2007).

[31] *Id.* Gas Plant Instruction No. 5B(1) and (2).

[32] *Id*.

47. The Commission directs Transwestern to file its revised journal entries to comply with GPI 5 and Account 102 within six months of the date the transfer in interest in the East Valley Lateral is consummated.

5. Rates

48. Transwestern requests a predetermination that the costs associated with the proposal to loop its existing San Juan Lateral may be rolled into the cost of service for Rate Schedule FTS-4 in its next NGA section 4 rate proceeding. Transwestern presents new incremental firm and interruptible transportation services under Rate Schedules FTS-5 and ITS-2, respectively, for the capacity paths that utilize the proposed Phoenix Lateral facilities. Transwestern's Rate Schedule FTS-5 and ITS-2 include the costs of acquiring an interest in the East Valley Lateral. Transwestern has offered the option of negotiated rates to prospective customers using its proposed Phoenix Lateral facilities, which will include transportation on the East Valley Lateral.

49. Transwestern's Rate Schedules FTS-5 and ITS-2 tariff sheet (Pro Forma Sheet No. 5A.06 to Third Revised Volume No. 1) set forth the base initial recourse rates for transportation from the receipt point areas of East of Thoreau, San Juan, West of Thoreau, and Phoenix to the delivery points of Phoenix or West of Thoreau. Transwestern indicates its proposed incremental charges will be in addition to any charges, including fuel, that expansion shippers pay for utilizing its existing system's facilities. The total charges FTS-5 or ITS-2 shippers will incur depend on the various receipt area and delivery point combinations. Transwestern also proposes that the Rate Schedule FTS-5 recourse rates apply to any capacity made available by the Phoenix Lateral that is not committed to the prospective customers that have entered into precedent agreements.

50. Transwestern states that it designed the incremental recourse rates for the proposed Phoenix Lateral using the straight fixed variable (SFV) method. The rates are based on an annual cost of service of approximately $89.9 million and annual demand determinants of 182,500,000 Dth based on a daily design capacity of 500,000 MMBtu per day.

51. Transwestern proposes a two-part FTS-5 firm transportation service rate with daily reservation and usage rates. The proposed initial recourse reservation and usage rates, respectively, are: (1) $0.8231 per MMBtu and $0.0224 per MMBtu for the receipt points East of Thoreau to the delivery points of Phoenix or West of Thoreau; (2) $0.8957 per MMBtu and $0.0163 per MMBtu for the receipt points San Juan to delivery points Phoenix or West of Thoreau; (3) $0.7211per MMBtu and $0.0153 per MMBtu for receipt points West of Thoreau to delivery points Phoenix or West of Thoreau; and (4) $0.4922

per MMBtu and $0 per MMBtu for the Phoenix Lateral receipt points Phoenix to delivery points Phoenix or West of Thoreau.

52. The ITS-2 interruptible transportation service is a one-part rate based on a 100 percent load factor derivative of the firm transportation rate. The proposed initial recourse interruptible rates are: (1) $0.8455 per MMBtu for the receipt points East of Thoreau to the delivery points of Phoenix or West of Thoreau; (2) $0.9120 per MMBtu for the receipt points San Juan to delivery points Phoenix or West of Thoreau; (3) $0.7364 per MMBtu for receipt points West of Thoreau to delivery points Phoenix or West of Thoreau; and (4) $0.4922 per MMBtu for Phoenix Lateral receipt points Phoenix to delivery points Phoenix or West of Thoreau.

53. The fuel percentages associated with FTS-5 and ITS-2 services are the applicable mainline fuel percentages: (1) 5.00 percent for the receipt points East of Thoreau to the delivery points of Phoenix or West of Thoreau, (2) 4.75 percent for the receipt points San Juan to delivery points Phoenix or West of Thoreau, (3) 4.50 percent for receipt points West of Thoreau to delivery points Phoenix or West of Thoreau, and (4) 0.00 percent for Phoenix Lateral receipt points Phoenix to delivery points Phoenix or West of Thoreau.

a. San Juan Loops A and B

54. We find that the proposal to loop the existing San Juan Lateral passes the threshold test for rolled-in rate treatment under our *Policy Statement on New Facilities* because the proposal does not result in subsidies by existing customers. No party has protested this rolled-in rate treatment. The revenues generated by multiplying the proposed San Juan Loops A and B determinants by the FTS-4 rates[33] should exceed the estimated cost of service by $14 million. In addition, a calculated incremental San Juan Loops A and B reservation rate of $0.0673 per MMBtu would be lower than the FTS-4 reservation and usage rates of $0.1746 per MMBtu and $0.0010 per MMBtu, respectively. Thus, the Commission grants a predetermination favoring rolling the costs associated with the proposed San Juan Loops A and B into the existing Rate Schedule FTS-4 rates in Transwestern's next NGA section 4 rate proceeding, absent materially changed circumstances.

[33] *See* Transwestern's *Application*, Exhibit P, Page 1, note 1. Transwestern states the FTS-4 reservation rate is $0.1746 per MMBtu and the usage rate is $0.0010 per MMBtu.

b. Phoenix Lateral

(1) Recourse Rates

55. We find that Transwestern's proposed incremental initial recourse rates will fully recover the costs of the new Phoenix Lateral and the acquired interest in the East Valley Lateral and are based on the proposed project's actual design capacity. Further, the rates are designed using the SFV method, consistent with Commission policy. No party has protested Transwestern's proposed FTS-5 and ITS-2 recourse rates. Accordingly, we approve the initial recourse rates, subject to the qualifications and modifications discussed herein.

56. Transwestern's proposed Phoenix Lateral's cost of facilities, used in developing the cost of service, include a $15 million acquisition cost for an undivided ownership interest in the East Valley Lateral.[34] In the above discussion on accounting issues, the Commission finds Transwestern's accounting treatment for the acquisition to be inconsistent with the requirements of the USofA. Therefore, it is not clear from the record what the acquisition cost represents and whether Transwestern has requested rate base treatment of an acquisition adjustment for the East Valley Lateral. To the extent that Transwestern has requested inclusion of an acquisition premium in rate base, *i.e.*, if the purchase price exceeds the depreciated book value, then Transwestern has not made a sufficient showing consistent with Commission policy that it should be permitted rate base treatment. Consequently, we direct Transwestern to revise its cost of service and rates for Rate Schedules FTS-5 and ITS-2 consistent with the accounting directives in this order, and to eliminate any acquisition adjustment related to the East Valley Lateral.

57. Transwestern has not proposed to allocate costs or credit revenue for ITS-2 interruptible services. The Commission's policy regarding 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.[35]

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[34] *Id*., Exhibit K, at 2 (Sept. 15, 2006).

[35] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement)*, 74 FERC ¶ 61,076, at 61,241 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006). *See also, NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996).

Accordingly, we direct Transwestern to revise its tariff to either provide for ITS-2 revenue crediting or to revise its rates and allocate costs to the ITS-2 interruptible services.

(2) Negotiated Rates

58. The Commission's *Alternative Rate Policy Statement* requires companies entering into negotiated rate agreements to provide cost-based recourse rates. To the extent that Transwestern enters into negotiated rates for its proposed services which are lower than its recourse rates, the *Alternative Rate Policy Statement* provides that Transwestern will be at risk for any resulting undercollection of project costs, and may not reallocate such unrecovered costs to any recourse rate shippers.

59. Transwestern has executed precedent agreements with four prospective customers – Arizona Public Service, Southwest Gas, Salt River, and UNS Gas – at negotiated rates for terms of service of 15 years. Transwestern states these prospective customers have negotiated a contractual right of first refusal (ROFR) that has been included in the precedent agreements and requests that the Commission approve this ROFR provision without modification.[36] Typically, the Commission does not usually address negotiated rate agreements in certificate orders, and we will not do so here. Transwestern must file executed copies of the firm service agreements and a tariff sheet identifying these agreements as non-conforming. The Commission will review and address the provision of the service agreements when Transwestern makes the required filings.

V. Environmental

60. The potential environmental impacts of Transwestern's proposed expansion project were evaluated in the draft and final EIS to satisfy the requirements of the National Environmental Policy Act (NEPA).[37] The U.S. Department of the Interior, Bureau of Land Management (BLM); the U.S. Department of Agriculture, Forest Service (FS); the U.S. Department of Transportation (DOT), Office of Pipeline Safety (OPS); the U.S. Department of the Interior, Bureau of Indian Affairs; and the Navajo Nation served as cooperating agencies in the preparation of the draft and final EIS.

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[36] Transwestern cites cases where the Commission has approved limited contractual rights of first refusal: *Colorado Interstate Gas Company*, 105 FERC ¶ 61,095 (2003); *El Paso*, 83 FERC ¶ 61,286 (1998); and *Kern River Gas Transmission Co.*, 53 FERC ¶ 61,172 (1990).

[37] 42 U.S.C. 4321-4347.

61. The Commission issued the draft EIS on April 27, 2007; public notice of the availability of the draft EIS was published by the U.S. Environmental Protection Agency (EPA) in the *Federal Register* on May 4, 2007.[38] 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 Notice of Intent (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. Five public meetings were held in the project area to solicit comments, and in addition, written and electronic comments were submitted directly to the Commission.

62. The Commission issued the final EIS on September 21, 2007; public notice of the availability of the final EIS was published by the EPA in the *Federal Register* on September 28, 2007.[39] The final EIS was mailed to the same parties as the draft EIS, as well as to all parties that commented on the draft EIS. The distribution list is provided as Appendix A of the final EIS.

63. The final EIS analyzes the environmental impacts of Transwestern's proposed expansion project, addressing issues related to project objectives; purpose and need; alternatives; geology (including paleontological resources); soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, public interest areas, and visual resources; socioeconomics (including transportation and traffic and environmental justice); cultural resources;[40] air quality; noise; reliability; safety; and cumulative impacts.

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[38] 72 FR 25287 (May 4, 2007).

[39] 72 FR 55194 (Sept. 28, 2007).

[40] Over 200 cultural resource sites (prehistoric and historic archaeological sites, as well as other historical features such as roads, railroads, and mines) were identified that might be affected by the project. In response, a Programmatic Agreement was developed in consultation with the Advisory Council on Historic Preservation, the State Historic Preservation Officers (SHPOs), the Navajo Nation Tribal Historic Preservation Officer, and the other federal agencies which administer project lands (BLM, FS, and BIA). The Programmatic Agreement provides for developing and implementing treatment plans to avoid or mitigate the proposed project's impacts on historic properties, and for

(continued)

64. The final EIS addresses issues and concerns raised in protests and in comments on the draft EIS. Comments on the draft EIS were received from federal, state, and local agencies; a Native American tribe; companies and organizations; and individuals. Concerns are raised regarding pipeline safety, impacts on existing and planned developments, and routing alternatives to the proposed Phoenix Lateral. Commentors assert that the draft EIS did not contain an adequate analysis of terrorism and public safety; cumulative impacts; environmental justice issues; and the timing, availability, and accuracy of information about the proposed project.[41]

65. The final EIS considers and responds to the concerns expressed, and concludes that construction and operation of Transwestern'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, Transwestern'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. Although many factors were considered in reaching this determination, the principal reasons are:

- 86 percent of the proposed pipeline facilities will be within or adjacent to existing rights-of-way;

- the project will be consistent with or in conformance with all identified comprehensive plans;

- Transwestern will implement its authorized Upland Erosion Control, Revegetation, and Maintenance Plan; Wetland and Waterbody Construction and Mitigation Procedures; Restoration Plan; Noxious Weed Management Plan; Spill Prevention and Response Procedures; Blasting Procedure; Trenching and Wildlife Guidelines; Migratory Bird Plan; Dust Control Plan; Fire Prevention and Suppression Plan; Forest Service Access Management Plan; Horizontal Directional Drill (HDD) Plan; Unanticipated Discovery Plans; and Site-specific Residential and Structural Implementation Plans to protect natural and cultural resources and residential areas during construction and operation of the project;

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completing studies to identify and to evaluate these impacts.

[41] In addition, several parties requested that the draft EIS be withdrawn or the period to comment be extended. We found no cause to adopt either alternative.

- Transwestern will implement all site-specific stipulations in the Plan of Development that will be developed by the BLM, the FS, and the U.S. Department of the Interior, Bureau of Reclamation;

- use of the HDD method will avoid disturbance to the bed and banks of the San Juan River and associated riparian areas. If the HDD fails and the alternative wet open-cut method is used, the short-term impact of a wet open-cut crossing will be environmentally acceptable and the terms and conditions that are expected to be included in the U.S. Fish and Wildlife Service (FWS) Biological Opinion will ensure that the project does not jeopardize the continued existence of the Colorado pikeminnow and the razorback sucker;

- Transwestern will implement provisions of a cultural resource Programmatic Agreement to assure that impacts to significant historic properties are avoided or appropriately mitigated;

- the appropriate consultations with FWS, SHPOs, and Native American tribes will be completed before Transwestern is allowed to begin construction in any given area; and

- an environmental inspection and mitigation monitoring program will ensure compliance with all mitigation measures that are conditions of Transwestern's certificate and other approvals.

66. Comments on the final EIS were submitted by Buckeye, Mainspring, and WVSV Holdings, and by Stardust-Tartesso jointly with Pulte. We address these comments below, as well as the issues raised in the protests. None of the protesting parties argue against the need for new infrastructure to bring additional gas supplies to Arizona; instead, they focus on the routing of Transwestern's proposed Phoenix Lateral. William C. Brady and Keith A. and Barbara J. Guther, landowners along the proposed right-of-way, have protested with respect to Transwestern's easement negotiation process, and their concerns are also addressed below.

A. Procedural Objections to the Environmental Review

Adequacy of Notice

67. Buckeye states that no public meeting on the proposed project was held in the town of Buckeye until December 14, 2006, and complains that "the failure to include

Buckeye in the process until December 2006, denied Buckeye the ability to fully comment upon issues of importance to its citizens."[42]

Commission Response

68. Nine noticed public information and scoping meetings were held during the first three months of 2006 in communities within approximately 15 to 90 miles of Buckeye.[43] Buckeye and those with interests in the town's development had the opportunity to send a representatives to one or more of these meetings. Further, as part of the pre-filing process in PF06-4-000, transcripts of the four scoping meetings held in February and March 2006, comments on Transwestern's proposal, summaries of meetings between the staff of the Commission and other agencies or tribes, and summaries of telephone conversations between the staff of the Commission and other agencies or tribes, were made available on the Commission's web site. We find the public availability of information on Transwestern's proposal, as well as the ability to review and respond to the proposal electronically, afforded Buckeye's residents an adequate opportunity to bring concerns regarding the proposal to the Commission's attention prior to Transwestern's submission of its application on September 15, 2006.

69. In addition to discussions held prior to Transwestern's filing its application, Buckeye had the chance to, and did, comment on the draft EIS issued in April 2007. Thus, we do not believe Buckeye was, as it alleges, denied "the ability to fully comment upon issues of importance to its citizens." Instead, we find Buckeye and its citizens had adequate notice of, and an opportunity to participate in, both the pre- and post-filing processes. Buckeye presented its concerns – objecting primarily to the route proposed by Transwestern – at an early stage in the proceeding, providing the Commission and others

[42] Buckeye's *Motion for an Evidentiary Hearing, or alternatively, to Strike Transwestern's Application*, at 3 (Aug. 8, 2007).

[43] Meeting sites were selected, in part, with an eye to proximity to current residents. While Buckeye projects extensive growth, its present population is less than that of the communities of some of the other meeting sites. As noted in the final EIS, the February 6, 2006 NOI, describing the initiation of scoping process, was mailed to the Buckeye Planning Director, Mayor, and a City Council member. Other recipients of the NOI from the Buckeye area included the Buckeye Public Library, 37 miscellaneous individuals and organizations, three landowners, an intervenor, and several of the developers in the Buckeye master planning corridor that later filed interventions. *See Final EIS, Volume II,* Response PM3-1, at II-58 (Sept. 21, 2007).

with adequate time to compare the preliminarily described route with possible alternative routes.

2. Availability of Information

70. Buckeye maintains that Transwestern provided inadequate information regarding the potential environmental impacts of its proposed project, thereby depriving Buckeye and others of an opportunity to meaningfully respond to the proposal. In particular, Buckeye claims additional information is needed to fully assess project alternatives; the collective or total direct, indirect, and secondary impacts; adverse human health and environmental impacts on minority and low income populations and federally recognized Indian tribes; threats of terrorist acts; impacts on global warming; and public safety risks.

71. Stardust-Tartesso and Pulte insist that Transwestern's responses to the Commission's data requests "were grossly inadequate and left a record that remains inadequate . . . [and w]orse, Transwestern undertook efforts to affirmatively confuse the record."[44] Specifically, Stardust-Tartesso and Pulte dispute Transwestern's representation of its proposed route as being designed to avoid residential subdivisions with immediate development plans. Additionally, Stardust-Tartesso and Pulte assert that Transwestern has not responded fully and accurately to Commission data requests seeking information on alternative routes.

Commission Response

72. Each aspect of the project identified by the comments and protests as being in need of additional information has been reviewed in both the draft and final EIS. We note that in response to concerns raised by Buckeye, a technical conference was held in Buckeye on December 14, 2006. The Commission delayed issuance of the draft EIS in order to fully respond to issues raised at the conference. To the extent the Commission found Transwestern's application deficient or unclear, we requested additional information, which Transwestern provided in several data responses. This supplementary information was placed in the record, thereby providing the public with access to the information. To date, the Commission has accepted and taken into account all comments filed in this proceeding, including those submitted beyond the time period provided for comments. We do not believe that the Commission's or the public's assessment of the proposed project has been hampered by a lack of information.

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[44] Stardust-Tartesso's *Motion for Withdrawal of the Draft EIS and Motion to Strike Transwestern's Application, or alternatively, for an Evidentiary Hearing,* at 5 (Sept. 14, 2007).

73. The Commission acknowledges that the information Transwestern communicated in the course of the prefiling process, and the information contained in its original application, were insufficiently detailed and inadequate in order for the Commission to complete a comprehensive assessment of the proposed project. However, we do not believe that the information Transwestern presented was, as Stardust-Tartesso and Pulte contend, so deficient that it "compromised FERC's environmental review process," with Transwestern's subsequent data responses doing "more to compound than to redress the defects of its original application."[45]

74. While the Commission will reject out of hand an application it finds to be patently deficient, we found Transwestern's presentation of its proposal in the prefiling process and its original application to be sufficiently detailed to accept for consideration. In the course of considering a proposed project, the Commission will routinely request additional information and studies from an applicant, typically to enable the Commission to resolve issues in dispute, clarify ambiguities, or correct inaccuracies. The Commission did so in this case, and believes that by doing so, material inaccuracies were corrected and all necessary information was provided. We see no need to reach a decision on whether Transwestern's earliest project descriptions were ambiguous or incomplete, because we find that Transwestern's subsequent data responses provided the Commission and the public with an accurate and thorough description of the proposed project and its potential environmental impacts. We conclude that sufficient information was available to the public at an early enough stage in the process so as to preclude any prejudice to the interests of those opposing the proposed project and to enable the Commission to undertake a thorough review of potential adverse environmental impacts and alternatives to the proposed project.[46]

3. Easement Negotiations

75. William C. Brady, Keith A. and Barbara J. Guther, Rick Sutter, Michael and Jeanette Sweeney, Shirley Ann Porter, and Lee and Vicki Redepenning are landowners in the path of the proposed pipeline. William C. Brady and Keith A. and Barbara J. Guther state they have been unable to successfully negotiate with Transwestern for compensation for an easement and damages. William C. Brady asks the Commission to deny Transwestern certificate authorization until he receives an acceptable offer of compensation.

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[45] *Id.*, at 6.

[46] *See also Final EIS, Volume II*, Response PM3-2, at II-59 (Sept. 21, 2007).

76. Rick Sutter points to El Paso's existing pipelines as an example of how the presence of an underground pipeline interferes with farming activities by limiting the travel of heavy equipment and commercial trucks and preventing certain tilling and ripping. Further, he claims pipelines' cathodic protection adversely impacts wells. Finally, he urges that easement holders, not property owners, bear the cost of maintenance, insurance, and taxes related to easements.

77. Kenneth and Paula Hawkins, Michael and Jo Lynn Kring, Michael and Jeanette Sweeney, Shirley Ann Porter, Lee and Vicki Redepenning, and Randall and Katherine Smith object to placing the proposed pipeline adjacent to El Paso's existing right-of-way through the Haystack Ranch subdivision in Yavapai County, Arizona, on the northern part of the proposed Phoenix Lateral. They assert this will adversely impact property values and interfere with residents' access to their homes during construction. Shirley Ann Porter states that the El Paso line is "beyond its designed life," implying the existing line is more prone to be damaged by nearby construction. Shirley Ann Porter adds that construction may disrupt Mojave Green rattlesnake habitat, thereby potentially exposing workers and residents to snake bites.

Commission Response

78. Regardless of the difficulties involved in a compensation negotiation, the Commission has no authority to weigh in on the material aspects of any potential agreement. If the matter of compensation cannot be resolved by a landowner and Transwestern, compensation will be determined by a court in an eminent domain proceeding.

79. With respect to Rick Sutter's concerns, we urge the parties to consider whether farming activities, such as the transit of heavy machinery across land above a buried pipeline, might go on unhindered if Transwestern were to make modifications to its pipeline's installation. Costs to maintain a right-of-way, tax and insurance payments charged to a right-of-way, compensation and stipulated remedies for adverse impacts attributable to a pipeline's installation and operation (e.g., such as damage to wells) are all matters subject to negotiation. Concerns about a prospective decline in property value and restrictions that may be imposed on property owners during and after construction, e.g., constraints on access to or the use of their property (including precautions necessary to guard against the consequences of disruptions to wildlife habitat) are similarly matters for discussion between the landowners and Transwestern.

B. General Objections to the Environmental Review

80. Buckeye claims that the final EIS fails to address all of its comments on the draft EIS and that certain of the Commission's comment responses were not based on any

investigation or environmental analysis. Further, Buckeye contends there is no scientific analysis to support the EIS finding that the proposed project will have minimal or no effect on natural topography, geology, vegetation, national parks, water wells, groundwater, mineral production, mining claims, farm land, crop land, land slides, flooding, or seismic activity. Buckeye argues that construction activities will clear desert vegetation, and that this will have a long-term impact on species dependent on vegetation, migratory birds, raptors, fisheries, fish, and fish egg entrainment. Buckeye maintains that employing a 50-foot distance between inhabited structures and construction work areas to avoid impacts by a proposed project is arbitrary and serves no purpose other than to save Transwestern money.

Commission Response

81. Volume II of the final EIS reproduces each page of the comments received in response to the draft EIS, and page by page, side by side, identifies each issue raised and replies in turn. The replies are sufficiently detailed to explain and support the conclusion that the proposed project will have minimal or no effect on many environmental resources. We acknowledge that the final EIS concludes that there will be a long-term impact on certain resources, and a number of resources – e.g., soils, crop production, land use, vegetation, visual resources, and wildlife habitat – that will be irretrievably lost as a result of the project's construction and operation. However, the majority of these losses can be minimized and compensated for by Transwestern's mitigation plans and our additional mitigation measures. We therefore find that the irretrievable resource loses are acceptable.

82. Section 380.12(j)(10) directs project sponsors to describe "mitigation measures for each residence that is within 50 feet of the edge of the pipeline construction right-of-way." This 50-foot distance serves as a means to identify those people most likely to be adversely affected by a proposed project. This distance is applicable to all gas projects, and is not, as Buckeye implies, a distance selected for Transwestern's convenience.

C. Risk of a Deliberate Attack on the Proposed Facilities

83. Buckeye faults the Commission's analysis of alternative routes for not comparing the likelihood and consequences of a terrorist attack on a pipeline located in a sparsely populated area as opposed to a pipeline located in an urban area.[47]

[47] Buckeye cites *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 9th Cir. 2006) as holding that the threat of terrorist attacks must be addressed in an EIS.

Commission Response

84. The Commission has no basis for estimating the likelihood of malicious action against any particular portion of the nation's energy infrastructure. Thus, we do not believe it is possible to determine and compare the odds of there being a deliberate attack on a natural gas facility in a sparsely populated area as opposed to one in a more heavily trafficked location. Buckeye has not proffered such a comparison. However, in our analysis of Transwestern's proposed project, we compared the route through Buckeye with alternative routes around Buckeye, taking into consideration the likelihood of, and potential damage which would result from, accidental damage to the pipeline. Section 4.11 of the final EIS examines factors relating to the reliability and safety of the proposed pipeline, including environmental impacts which would result from damage to the pipeline. In section 4.11.1 we discuss calculation of the area which would be subject to potential impact from a pipeline failure. The environmental impacts from a pipeline failure would be the same whether the damage was caused by intentional or accidental action.

85. Section 4.11.1 of the final EIS describes how DOT's regulations contain more rigorous standards for the design, testing, and operation of pipelines in areas of greater population density. These standards serve to reduce the potential for damage to pipelines in such areas, whether from intentional or accidental action. Section 4.11.3 of the final EIS examines the impact on public safety from pipeline failures, including ruptures. Again, we expect the impacts to be much the same, whether the damage is caused by accidental or intentional action.

86. Section 4.11.4 of the final EIS specifically discusses terrorism. It describes steps the Commission has taken in response to the attacks of September 11, 2001, including removing detailed energy facility location and design plans from our website. In addition, we note that the Department of Homeland Security has developed operational criteria and surveillance requirements and other approaches to risk management that ensure safety in the design, construction, testing, operation, and maintenance of pipeline facilities. These requirements address the character of the area surrounding a gas pipeline and Transwestern will be required to adhere to these criteria.

87. Finally, we note that in areas where a gas pipeline incident, either accidental or intentional, could do considerable harm to people or their property, companies are required to establish and maintain a liaison with appropriate fire, police, and public officials to learn the resources and responsibilities of each organizations that may respond to a natural gas pipeline emergency and to coordinate mutual assistance. Companies must also establish a continuing education program to enable customers, the public, and government officials to recognize a gas pipeline emergency and report it to appropriate

public officials. Transwestern's liaison program and emergency response procedures are described on pages 4-209 and 4-210 of the final EIS.

88. We conclude that while the consequences of a pipeline failure on any portion of Transwestern's proposed project could be potentially significant, the risk of such a failure, particularly as the result of intentional action, is, while not specifically quantifiable, very low. The final EIS states, and we affirm, that the continuing need to construct facilities to support future natural gas pipeline infrastructure is not diminished because of the threat of deliberate attacks on this infrastructure. Moreover, the unpredictability of such acts does not support a finding that this particular proposed project should not be constructed.

D. Air Quality

89. Buckeye alleges that the commission did not consider possible adverse impacts of the proposed project on the air quality in Maricopa County, Arizona, portions of which are designated as nonattainment areas by the EPA.

Commission Response

90. The final EIS discusses air quality impacts and mitigation measures, and we affirm the finding that the proposed project will comply with all applicable federal, state, and local air quality regulations, including the federal General Conformity requirements. The Final General Conformity Determination that was included as an appendix to the final EIS was prepared in consultation with the Maricopa Association of Governments; the Arizona Department of Environmental Quality (ADEQ); and the EPA, Region IX. The basis for the Final General Conformity Determination includes (1) documentation demonstrating that the project would not exceed emissions budgets in the one-hour ozone State Implementation Plan for the Phoenix-Mesa Planning area and (2) documentation from the ADEQ fulfilling the commitment requirements.[48]

E. The North and South Buckeye Alternatives

91. The EIS discusses alternative routes around Buckeye that would avoid most of the anticipated developments in the town's municipal planning area. The route through Buckeye would be approximately 27.8 miles, whereas each of the routes around Buckeye would be approximately 47 miles, an addition of approximately 19 miles. Transwestern states that to flow gas around Buckeye, it would need to include 15,000 horsepower (hp)

[48] *See* 40 C.F.R. §§ 51.858(a)(5)(i)(B) and 93.158(a)(5)(i)(B) (2007).

of compression, and expects that the longer routes would cost approximately $74 million more than the estimated $52.8 million cost of the shorter route.[49] The alternative routes would place Transwestern's pipeline within an established utility corridor that includes an existing Central Arizona Project (CAP) canal[50] and existing and approved electric transmission lines. The alternative routes would cross BLM-managed land and be placed within a one-mile wide BLM-designated utility corridor. A short portion of the proposed pipeline (less than two miles) would need to be directed either north or south of the CAP canal. But for this short deviation to either the north or south of the canal, both the North and South Buckeye Alternatives follow the same route.

1. Objections to the North and South Buckeye Alternatives Analysis

92. The final EIS notes that because residential development is planned for both Buckeye, and for the Tonopah Valley that would be traversed by the alternative routes, selecting one route over the other would relocate, but not eliminate, the project's impacts on prospective developments. Buckeye challenges this, asserting that the alternative routes would not need to pass through any planned developments, and that portions of the alternative routes would be in a corridor at least a mile wide. Buckeye complains that the final EIS has not recognized the comparatively advanced stage of development in Buckeye (where zoning, subdivision platting, and construction are underway), as opposed to the earlier stage of development along the Tonopah Valley route. Buckeye observes that it is far less disruptive to make the changes required to accommodate the proposed pipeline at an earlier stage of planned development.

93. Companies planning developments in Buckeye favor an alternative route. Trend Homes, Homelife, Pulte, and Hacienda Builders state they are currently erecting residential homes on lots in Buckeye, and are concerned with the safety of having a pipeline in proximity to an increasing population and with the adverse impact of a pipeline on property values. Gilligan Sun Valley, Cherry Properties, CWS Sun Valley, Desert Creek, Land Baron Investments, Stardust-Tartesso, Sun Valley Assemblage,

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[49] The draft and final EIS contains a detailed discussion of the North and South Buckeye Alternatives. *See Final EIS*, *Volume I*, section 3.4.2.5, 3-12 to 3-21 (Sept. 21, 2007).

[50] The CAP is a 336-mile-long aqueduct that brings water from the Colorado River to Maricopa, Pinal, and Pima Counties in Arizona. The CAP is managed and operated by the Central Arizona Water Conservation District, a municipal corporation.

Lennar, and WVSV Holdings argue for an alternative route that would circumvent the dense population anticipated along the planned route.

94. The owner of Festival Ranch, a planned 15,000 residential unit development, states that the North and South Buckeye Alternatives would run "precariously close" to planned residences, as well as cross the Hassayampa River, thereby disrupting the river's habitat and soils, and thus asserts the proposed pipeline should follow the route through Buckeye.[51]

95. Buckeye, Stardust-Tartesso and Pulte, and WVSV Holdings fault the Commission for not weighing the proposed project's potential risks against its anticipated benefits. The parties contend that locating the proposed pipeline within an existing utility corridor through an area slated for residential and commercial development increases the chance that a ground disturbance might damage Transwestern's new pipeline and cause an accident with an impact proportional to the density of the surrounding population.

96. Buckeye believes the Commission did not give sufficient weight to a report on pipeline safety,[52] and emphasizes the report's conclusion that the proposed route through Buckeye presents a "far greater likelihood" of a catastrophic event than alternative routes around Buckeye. Stardust-Tartesso and Pulte maintain the Commission "consciously refused to consider either the risks associated with the proposed pipeline route or the extent to which the alternative route would offer safety advantages."[53] WVSV Holdings cites the similarity of the Commission's approach to analyzing proposed natural gas projects' risks in other proceedings, and alleges the Commission is following a "cookie cutter" approach to pipeline safety that fails to take into account the specific characteristics of each project. WVSV Holdings insists that this case presents heightened safety concerns due to the proposed location of a pipeline in an area scheduled for development.[54] In light of the growth that it expects will take place, WVSV Holdings

[51] 10,000 West, L.L.C.'s *Comments* (June 8, 2007).

[52] The report, *Risk Informed Assessment of the Proposed Phoenix Expansion Natural Gas Transmission Pipeline Project,* was prepared by Brown and Caldwell and included in draft form as an appendix to Buckeye's June 18, 2007 comments on the draft EIS. Buckeye placed the final report in the record on July 27, 2007.

[53] Stardust-Tartesso's and Pulte's *Comments on Final EIS*, at 3, (Oct. 29, 2007).

[54] WVSV Holdings references the May 11, 2007 *Evaluation of the Constructability, Safety Measures and Potential Conflicts of the Transwestern Pipeline Phoenix Expansion Project Within the Town of Buckeye Arizona,* prepared by EN

(continued)

advocates compelling Transwestern to meet Class 3 standards upon installation, rather than waiting until future development matches the Class 3 criteria, insisting that "[t]here is no rational basis for distinguishing between developments being constructed in the present and those that will be constructed within the next few years."[55]

97. Buckeye contends that in its review of alternative routes, the Commission took into account the costs that would be imposed on Transwestern if had to construct additional facilities, but neglected the costs that would be imposed on landowners and developers if the route selected runs through Buckeye. Buckeye, Stardust-Tartesso, and Pulte challenge Transwestern's projected costs, claiming the Commission neglected to compare costs associated with operation and maintenance, land acquisition, future utility crossings, and future pipeline class location changes. Buckeye maintains that there has been no review of Transwestern's cost to meet Class 2 standards,[56] to condemn property, to put in place mitigation to provide minimal protections to the citizens of Buckeye, and the cost to Buckeye to maintain emergency response crews. Stardust-Tartesso and Pulte add that the Commission cannot reject an alternative route solely on the basis of Transwestern's claim that it will be too expensive.

98. Buckeye and WVSV Holdings fault the Commission for accepting Transwestern's statement that alternative paths around Buckeye will necessitate adding 15,000 hp of compression without conducting any further investigation or analysis. On October 25, 2007, the Commission issued a request to Transwestern for information demonstrating the need for compression to flow gas over the longer alternative routes. Stardust-Tartesso

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Engineering and placed in the record on August 1, 2007. *See Final EIS, Volume II*, at II-458 to II-504 (Sept. 21, 2007).

[55] WVSV Holdings' *Comments on the Final EIS*, at 19 (Oct. 24, 2007).

[56] DOT categorizes all locations along a gas pipeline according to the population near the pipeline. *See* 49 C.F.R. § 192.5 (2007). Locations with the smallest population are designated as Class 1. As the population along the pipeline increases – as is expected along portions of the selected route of the proposed Phoenix Lateral, as well as along El Paso's existing right-of-way – the class location increases. Pipeline safety regulations impose more stringent design and operational requirements as the class location increases. Thus, when population growth results in the reclassification of a segment of pipe, the operator must lower operating pressure to provide an additional margin of safety, unless a pressure test on the pipe has confirmed that a prescribed safety margin exists. If it is not possible to confirm the prescribed margin exists, the operator must replace the old pipe with new pipe that conforms to stricter specified design factors.

and Pulte express frustration with the timing of this data request, contending that seeking such information after issuance of the final EIS Commission's deprives the public of a meaningful opportunity for review and comment. WVSV Holdings alleges that in a December 2006 meeting with investors, Transwestern indicated that compression would be added to the Phoenix Lateral in late 2010.[57] WVSV Holdings argues that because Transwestern is planning to add compression to the pipeline it hopes to site within Buckeye, there is no cause to take into account the financial and environmental costs of adding compression to the North and South Buckeye Alternatives, since all of the prospective routes will eventually include compression.

99. For portions of the proposed Phoenix Lateral's path, BLM was a cooperating federal agency in preparing the EIS. In its consideration of the North and South Buckeye Alternatives, BLM concluded that because each of the alternative routes would impact approximately 220 more acres than the route through Buckeye, neither was an environmentally preferable alternative.[58] Buckeye insists that BLM's assessment was inadequate, because BLM failed to also take into account other factors, such as the risk of placing a pipeline in a densely populated rather than in a sparsely populated one.

100. Buckeye insists that regardless of the route selected, the Commission should impose wider setbacks, on the grounds that the hazard radius associated with a 36-inch diameter pipe operating at 1,100 psig is up to 1,200 feet, a position WVSV Holdings endorses. Buckeye stresses that there should be no habitable structures within this distance of the pipeline. Buckeye renews its request that the Commission adopt specific mitigation measures applicable to the portion of the proposed pipeline route in Buckeye.

101. Buckeye complains the Commission has not properly examined the option of building lateral lines from the alternative routes around Buckeye to bring gas to Buckeye end users. Among the reasons cited in the final EIS against this option is that the lateral lines would need to share Salt River's powerline easements, a placement Salt River states it will not permit. Buckeye counters that there is no federal or state law that would enable Salt River to preclude such lateral lines to share its easement. Buckeye adds that the Commission has failed to take into account the lesser impacts of smaller, lower-pressure lateral lines when compared to a larger, high-pressure mainline.

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[57] WVSV Holdings also alleges that Energy Transfer Partners, LP, the owner of Transwestern, stated the intent to add compression to the Phoenix Lateral in an October 10, 2007 presentation to investors. WVSV Holdings' *Supplemental Comments on the Final EIS* (Nov. 5, 2007).

[58] *See Final EIS, Volume I,* at 3-13 (Sept. 21, 2007).

102. In Maricopa County, the Transwestern's proposed pipeline route would cross a 81.6-acre parcel of the 3,400-acre Enterprise Ranch, a planned residential development. Between MP 174.3 and 174.8, the pipeline would require 3.0 acres for a new permanent right-of-way in deviating from the existing El Paso right-of-way to allow for a straight crossing of the Gila River and to avoid technical difficulties associated with constructing too close to the existing El Paso pipelines at the river's rock bluff. WVSV Holdings renews its opposition to this deviation, reasserting that the prr's rock bluff. WVSV Holdings renews its

within Casa Grande should compel us to also reject co-location within the planned Terrazo, Solana Ranch North, Maratea, Vista Canyons, and Verona developments. While we found safety and reliability concerns to be equally applicable to the 5.2-mile long section through Casa Grande and the 4.3-mile long Pinal County El Paso Co-Location Variations route through the planned developments, we found significantly different facts and circumstances between the two sections that led us to different results. First, we note that within Casa Grande, the offset between El Paso's existing pipelines and the proposed Phoenix Lateral would be 25 feet, whereas the Pinal County El Paso Co-Location Variations establish an offset of 35 feet. We find this additional distance diminishes the drawbacks associated with co-location. Second, there is a marked contrast between the current state of development along the different sections of the proposed route. The section through Casa Grande is already heavily developed, with additional residential growth encroaching on El Paso's right-of-way, whereas the Pinal County El Paso Co-Location Variations will cross five separate planned developments that are, at present, undeveloped. Consequently, when reviewing the routes within Casa Grande, we found that (1) the deviation from El Paso's right-of-way would follow the North Santa Cruz Wash "for a substantial length, providing a natural buffer between the pipeline and many of the existing and planned developments;" (2) there would be 39 existing residences within 50 feet of the construction work area along the co-located route, whereas along the adopted route there would be none; and (3) there would be 82 planned residences within 50 feet of the construction work area along the adopted route, whereas there would be 46 planned residences along the co-located route.[79] With respect to the Pinal County El Paso Co-Location Variations, there is no comparable advantage to a route that would deviate from El Paso's right-of-way. In view of these differences between the pipeline offset distance and the state of development along the two sections of the proposed route, we affirm our finding that the route within Casa Grande merits establishing a new right-of-way, whereas the route through the planned Terrazo, Solana Ranch North, Maratea, Vista Canyons, and Verona developments merits co-location.

142. DOT regulations require that all companies with cathodic protection systems monitor their systems on a regular basis and correct any deficiencies.[80] We expect Transwestern's adherence to this requirement (as well as El Paso's) will insure that the

[79] *Final EIS, Volume I,* at 3-28 (Sept. 21, 2007).

[80] *See* 49 CFR § 192.465 (2007), which requires that each pipeline under cathodic protection must be tested at least once each calendar year to determine whether the cathodic protection meets current DOT standards.

location of Transwestern's new pipeline in proximity to El Paso's existing pipelines will not result in detrimental impacts to any of the pipelines' cathodic protection systems.

143. In previously addressing WVSV Holdings' concerns regarding locating Transwestern's new pipeline adjacent to El Paso's existing pipelines, we determined that because the proposed pipeline will be constructed and operated in accordance with all applicable federal safety standards along its entire route, including the portions of the route that parallel the existing El Paso pipelines, the presence of Transwestern's new pipeline will not result in a substantial increase in safety risks.[81] The Phoenix Lateral will be installed within a new 50-foot-wide right-of-way adjacent to El Paso's existing pipeline easement across the Midway development and 14 other planned developments in Pinal County. Co-locating pipelines in adjacent easements is preferred by the Commission and other regulatory agencies because it ultimately reduces the overall environmental impact of multiple infrastructure projects. The new easement will provide sufficient room for both Transwestern and El Paso to safely construct, operate, and maintain their pipeline facilities. If the character of the area in the vicinity of the pipelines is changed, changes to the pipelines or their operations may be compelled in order to meet a stricter DOT safety standard.

144. Mainspring seeks a rationale for our rejection of an alternative route that would have followed an existing Salt River right-of-way. We believe this was addressed in sufficient detail in the final EIS, where we found the alternative route would: (1) add approximately 11.5 mile to the proposed Phoenix Lateral and approximately 8.7 miles to third party laterals; (2) require approximately 219 more acres of construction right-of-way and 123 more acres of permanent right-of-way, resulting in correspondingly greater impacts on soils, vegetation, and wildlife; and (3) require deviating out of the approved powerline corridor for extensive lengths due to the rough terrain along the Salt River right-of-way.[82]

H. Conclusion

145. We have reviewed the information and analysis contained in the final EIS on potential environmental effects of the proposed project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that

[81] *Final EIS*, *Volume II*, at II-562 (Sept. 21, 2007).

[82] *Final EIS*, *Volume I*, at 3-30 (Sept. 21, 2007).

Transwestern's proposed project, if constructed and operated in accordance with the environmental mitigation measures recommended in the final EIS and described in the Appendix B of this order, is environmentally acceptable. Therefore, Transwestern's certificate authorization is conditioned on its compliance with these environmental mitigation measures.

146. 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.[83]

147. Transwestern shall notify 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 Transwestern. Transwestern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

VI. Summary

148. For the reasons discussed above, we find El Paso's abandonment of a portion of its ownership interest in the East Valley Lateral by sale to Transwestern and Transwestern's Phoenix Expansion Project to be in the public convenience and necessity, subject to the conditions described herein. Further, we reach a predetermination favoring rolling the costs associated with the proposed San Juan Loops A and B into the existing Rate Schedule FTS-4 rates in Transwestern's next NGA section 4 rate proceeding, absent significantly changed circumstances.

149. At a hearing held on November 15, 2007, the Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

[83] *See, 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.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) In Docket No. CP06-459-000, a certificate of public convenience and necessity is issued to Transwestern under NGA section 7(c) authorizing the construction, acquisition, and operation of natural gas facilities, as described in this order and the application and supplements, as conditioned herein, and subject to the environmental conditions set forth in Appendix B of this order.

(B) In Docket No. CP07-9-000, El Paso is granted permission and approval under NGA Section 7(b) to abandon by sale to Transwestern an undivided ownership interest in the East Valley Lateral, as described in this order and the application and supplements, as conditioned herein.

(C) The certificate authority granted in Ordering Paragraph (A) is conditioned on Transwestern:

(1) Constructing and making available for service the facilities described herein within one year of this final order, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(2) Complying with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Executing firm contracts for the capacity levels and terms of service represented in the precedent agreements supporting the project;

(4) Filing actual tariff sheets between 30 and 60 days prior to placing the facilities into service;

(5) Filing revised costs and rates to reflect the accounting and rate treatment as directed for the East Valley Lateral, between 30 and 60 days prior to placing the facilities into service;

(6) Filing revised tariff sheets to either provide for ITS-2 revenue crediting or to revise its rates and allocate costs to the ITS-2 interruptible services, between 30 and60 days prior to placing the facilities into service;

(7) Maintaining 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, J, K and other Statements in any future NGA section 4 or 5 rate cases;

(8) Maintaining accounts for the incremental expansion facilities in accordance with section 154.309 of the Commission's regulations;

(9) Accounting for the acquisition of the natural gas facilities, as discussed in the body of this order, in accordance with Gas Plant Instruction 5 and Account 102 of the Uniform System of Accounts. Transwestern shall file its proposed accounting with the Commission within six months of the date the transfer in interest in the East Valley Lateral is consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries; and

(10) Complying with specific environmental conditions in Appendix B. Further, Transwestern shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies Transwestern. Transwestern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) The abandonment authority granted in Ordering Paragraph (B) is conditioned on El Paso:

(1) Notifying the Commission within 10 days of the date of abandonment of an undivided ownership interest in the East Valley Lateral; and

(2) Accounting for the disposition of an undivided ownership interest in the East Valley Lateral in accordance with GPI 5F and Account 102 of the Uniform System of Accounts. El Paso must file its proposed accounting with the Commission within six months of the date the transfers are consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

(E) In Docket No. CP06-459-000, the protests are denied and granted, for the reasons discussed in the body of this order.

(F) In Docket No. CP06-459-000, the requests for a full evidentiary hearing are denied, for the reasons discussed in the body of this order.

(G) In Docket No. CP06-459-000, the motions to intervene out-of-time are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Transwestern Pipeline Company, LLC
Docket No. CP06-459-000

Intervening Parties

Agave Energy Corporation
Arizona Corporation Commission
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Company
BP America Production Company jointly with BP Energy Company
William C. Brady*
Town of Buckeye
Calpine Energy Services
California Public Utilities Commission
City of Casa Grande, Arizona
Cherry Properties, L.L.C.
Chevron Natural Gas, a division of Chevron U.S.A. Inc.
ConocoPhillips Company
Coral Energy Resources, L.P.
Cox Rodeo 160, L.L.C.
CSW Sun Valley South Holdings, L.L.C.
Dessert Creek, LLC jointly with Buckeye 1680, LLC and Buckeye Hassayampa, LLC
El Paso Municipal Customer Group
El Paso Natural Gas Company
Gila River Power, L.P.
Gilligan Sun Valley, L.L.C. jointly with JPC Sun Valley, L.L.C.
and WLAD Sun Valley, L.L.C.
Hacienda Builders
Kenneth and Paula Hawkins
Homelife Communities Group of Arizona
Michael and Jo Lynn Kring
Land Baron Investments*
LSP Arlington Valley, LLC
Lennar Communities Development, Inc.
Mainspring Casa Grande, LLP jointly with Miller & White 815, LLP and Anderson & Miller 694, LLP
Mewbourne Oil Company
Miller Holdings, Inc.*
New Harquahala Generating Company, LLC

Occidental Energy Marketing, Inc.
Pacific Gas and Electric Company
PFP Incorporated
Pinal County, Arizona
Shirley Ann Porter*
Public Service Company of New Mexico
Pulte Home Corporation
Lee and Vicki Redpenning
Salt River Project Agricultural Improvement and Power District
Sempra Global
Randall and Katherine Smith
Southern California Gas Company jointly with San Diego Gas & Electric Company
Southwest Gas Corporation
Stardust-Tartesso W12, Inc.
Rick Sutter
Jenette Sweeney
Sun Valley Assemblage, L.L.C.
Tartesso Community Association
Tenaska Marketing Ventures
Trend Homes
UNS Gas, Inc.
Waste Management Arizona Landfills*
WVSV Holdings, L.L.C.

* Filed out-of-time.

APPENDIX B

Transwestern Pipeline Company, LLC
Docket No. CP06-459-000

Environmental Conditions for the Phoenix Expansion Project

1. Transwestern shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and in the final EIS, unless modified by this order. Transwestern must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

   a. the modification of conditions of this order; and
   b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.

3. **Prior to any construction**, Transwestern 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 final EIS, as supplemented by filed alignment sheets, and shall include the Commission staff's recommended facility locations, if any. **As soon as they are available, and before the start of construction**, Transwestern shall file with the Secretary

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

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

5. Transwestern 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, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed that have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

   This requirement does not apply to extra workspace allowed by Transwestern's authorized 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 acceptance of the certificate and before construction begins**, Transwestern shall file an initial Implementation Plan with the Secretary for the review and written approval of the Director of OEP describing how Transwestern will implement the mitigation measures required by this order. Transwestern must file revisions to the plan as schedules change. The plan shall identify:

    a. how Transwestern 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 Transwestern will ensure that sufficient personnel are available to implement the environmental mitigation;
    c. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;
    d. what training and instructions Transwestern 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 Transwestern's organization having responsibility for compliance;
    f. the procedures (including use of contract penalties) Transwestern 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. Transwestern shall file updated status reports with the Secretary on a **biweekly** basis **until** all construction-related activities, including restoration, are complete. These status reports shall also be provided to other federal and state agencies with permitting responsibilities upon request. Status reports shall include:

    a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) or the third-party Compliance Monitors 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. 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 Transwestern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transwestern's response.

8. Transwestern must receive written authorization from the Director of OEP **before commencing service for each component of the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way are proceeding satisfactorily.

9. **Within 30 days of placing the certificated facilities in service**, Transwestern 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 Transwestern has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

10. Transwestern shall work with the City of Casa Grande to minimize the impact of the Phoenix Lateral on the City's future sanitary sewer infrastructure in the North Santa Cruz Wash. Transwestern shall provide a report documenting the results of this consultation and include additional engineering documents to support the co-location of the Phoenix Lateral and the City's future sewer infrastructure along the North Santa Cruz Wash. In addition, Transwestern shall work with the City to finalize negotiations regarding the mitigation measures that Transwestern would implement to minimize impacts on the City's municipal golf course and future

recreational trails within the Greenbelt Utility Corridor. The status of these negotiations and the mitigation measures developed shall be included in the above-referenced report. The report shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.

11. Transwestern shall adopt the Waste Management Arizona Variation and work with Waste Management Arizona Landfills (WMA) to minimize the amount of temporary extra workspace outside of WMA property. Transwestern shall file alignment sheets depicting the permanent and construction rights-of-way of the Waste Management Arizona Variation and all associated temporary extra workspace with the Secretary for the review and written approval of the Director of OEP **before construction**.

12. Transwestern shall adopt the Pinal County El Paso Co-Location Variations through the planned developments of Terrazo, Solana Ranch North, Maratea, Vista Canyons, and Verona. Transwestern shall file alignment sheets depicting the permanent and construction rights-of-way of the Pinal County El Paso Co-Location Variations and all associated temporary extra workspace with the Secretary for the review and written approval of the Director of OEP **before construction**.

13. Transwestern shall obtain detailed maps of the Desert Creek development from the developers. Based on these maps and consultation with the developers, Transwestern shall develop a route variation that would minimize the impact of the permanent right-of-way on planned residential lots by utilizing other planned rights-of-way, greenspaces, and other land uses within the Desert Creek development. Transwestern shall file documentation of its consultation with Desert Creek and alignment sheets depicting the permanent and construction rights-of-way of the variation and all associated temporary extra workspace with the Secretary for the review and written approval of the Director of OEP **before construction**.

14. Transwestern shall coordinate with the Bureau of Land Management (BLM), the Forest Service (FS), and other applicable agencies to finalize its Restoration Plan to address any additional restoration concerns identified by these agencies. The final Restoration Plan shall be filed with the Secretary **before construction**.

15. Transwestern shall revise its site-specific horizontal directional drill (HDD) crossing plan for the San Juan River to include a prominent note that only minimal hand clearing to install the aboveground HDD guidance system shall be conducted between the HDD entry and exit locations. Transwestern shall file the revised

HDD Plan with the Secretary for the review and written approval of the Director of OEP **before construction of the San Juan Loop A**.

16. Transwestern shall not begin a wet open-cut crossing of the San Juan River **until** it: files documentation of the events leading up to the HDD failure with the Secretary; files documentation that it has provided at least 7 days advance notification of the start of in-stream activities at the San Juan River to the New Mexico Department of Game and Fish (NMDGF); and receives written notification from the Director of OEP that a wet open-cut crossing may begin.

17. Transwestern shall coordinate with the BLM, the FS, and other applicable agencies to finalize its Noxious Weed Management Plan to address any additional issues or concerns identified by these agencies. The final Noxious Weed Management Plan shall be filed with the Secretary **before construction**.

18. Transwestern shall continue to consult with the Fish and Wildlife Service (FWS) and finalize its plan to protect migratory bird species during construction, including: specific details of the measures that would be implemented to protect nesting migratory birds; clarification as to which measures apply only to large migratory birds and which measures apply to all migratory birds; and a discussion of the basis for those distinctions. The plan and documentation of consultation with the FWS regarding the plan shall be filed with the Secretary **before construction**.

19. If construction of the San Juan Loops A and B has the potential to occur during the peregrine falcon nesting season, Transwestern shall conduct surveys for active peregrine falcon nests during the nesting season **before beginning construction of the San Juan Loops A and B**. These surveys shall extend 1 mile from either side of the construction work area where suitable peregrine falcon nesting habitat is identified. If active peregrine falcon nests are found within the survey corridor, Transwestern shall consult with the NMDGF and the Navajo Nation to develop conservation measures to prevent adverse impacts on the nests. The results of the surveys and the conservation measures developed shall be filed with the Secretary **before initiating construction within a 1-mile radius of any active peregrine falcon nest.**

20. Transwestern shall not begin construction activities **until**:

    a. Transwestern completes any outstanding species-specific surveys and the Commission receives comments from the FWS regarding the preconstruction survey reports;

b. the Commission completes formal consultation with the FWS; and
c. Transwestern receives written notification from the Director of OEP that construction and/or implementation of conservation measures may begin.

21. Transwestern shall prepare an updated table listing all residences, businesses, and structures within 50 feet of the construction work area and site-specific residential and structural implementation plans for these residences, businesses, and structures. The site-specific residential and structural implementation plans shall show the area that would be disturbed during construction and the safety measures that would be implemented, such as construction fencing, access provisions, and use of steel plates. The plans shall also show landscaping that would be removed during construction activities within 50 feet of residences, businesses, and structures. The updated table and site-specific residential and structural implementation plans shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.

22. Transwestern shall coordinate with the BLM and the FS to develop access management plans that conform to agency standards. Specifically:

a. The BLM access management plan shall include supporting maps depicting key elements of the access management plan including OHV deterrent locations, road closures (temporary and permanent), new project access, road improvements, and road reclamation, if necessary. The plan shall also include a commitment to develop and implement a post-construction schedule of maintenance for access roads on BLM-managed lands;
b. The Forest Service Access Management Plan shall be updated to include maps similar to those to be included in the BLM access management plan and stipulations for restricting vehicle access during construction if determined necessary by the FS; and
c. Both plans shall include information regarding the frequency of monitoring that would be conducted, the methodology for reassessing the implemented measures in the future, and enforcement measures.

The plans shall be filed with the Secretary **before construction across BLM-managed or Forest System lands**.

23. Transwestern shall defer implementation of any treatment plans/mitigation measures (including archaeological data recovery), construction of facilities, and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

a. Transwestern prepares and files with the Secretary, and submits to the consulting parties, as appropriate, any outstanding cultural resources reports, any cultural resources reports that were revised to address agency comments, and necessary treatment plans, including those for the Waste Management Arizona Variation;
b. Transwestern files with the Secretary the comments of the consulting parties on all cultural resources reports and plans submitted for review; and
c. the Director of OEP reviews and approves all cultural resources reports and plans, and notifies Transwestern in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

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

24. Transwestern shall prepare a revised Dust Control Plan that specifies the following:

a. the sources of water that would be used for dust control;
b. the anticipated quantities of water that would be required;
c. measures to prevent fish and fish egg entrainment during dust control water withdrawals;
d. the measures that would be taken to limit visible density (opacity) of emissions to less than or equal to 20 percent in Maricopa and Pinal Counties, Arizona;
e. how visual density would be measured to determine that it is less than or equal to 20 percent in Maricopa and Pinal Counties, Arizona;
f. how compliance with the 20 percent visual density requirement in Maricopa and Pinal Counties, Arizona would be recorded;
g. the individuals with authority to determine if/when water needs to be reapplied for dust control;
h. the individuals with authority to determine if/when a palliative needs to be used;
i. the individuals with authority to stop work if the contractor does not comply with dust control measures; and
j. the speed limit that would be required on unsurfaced roads.

The revised Dust Control Plan shall be filed with the Secretary for the review and written approval of the Director of OEP **before construction**.