

122 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transwestern Pipeline Company, LLC

Docket Nos. CP06-459-001

El Paso Natural Gas Company

and CP07-9-001
(Not Consolidated)

ORDER DENYING MOTION FOR STAY AND REQUESTS FOR REHEARING

(Issued February 21, 2008)

1. On November 15, 2007, the Commission issued an order in Docket No. CP06-459-000, granting Transwestern Pipeline Company, LLC (Transwestern) certificate authorization under section 7(c) of the Natural Gas Act (NGA) to construct and operate the Phoenix Expansion Project.¹ The 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 will construct and operate (1) approximately 25 miles of 36-inch diameter pipeline to loop its existing mainline in San Juan Lateral in San Juan and McKinley Counties, New Mexico, and (2) approximately 95 miles of 42-inch diameter pipeline and 164 miles of 36-inch diameter pipeline (the Phoenix Lateral) extending from its 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 just south of Phoenix. Transwestern will purchase a portion of El Paso's ownership interest in the East Valley Lateral.

2. In the same November 2007 Order, in Docket No. CP07-9-000, the Commission granted El Paso permission and approval under NGA section 7(b) to

¹ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 (2007) (November 2007 Order).

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. On December 17, 2007, the Town of Buckeye, Arizona, (Buckeye) jointly with WVSV Holdings, L.L.C., Stardust-Tartesso W-12 Inc. (Stardust-Tartesso), and Pulte Homes Corporation (Buckeye Interests); Mainspring Casa Grande, LLP, jointly with Miller & White 815, LLP and Anderson & Miller 694, LLP (Mainspring); and El Paso filed requests for rehearing of the November 2007 Order. On December 20, 2007, Buckeye Interests filed a motion for a partial stay of the November 2007 Order in Docket No. CP06-459-000 to halt construction activities within Buckeye. On January 4, 2008, Transwestern, the Salt River Project Agricultural Improvement and Power District (Salt River), the Arizona Public Service Company, and Southwest Gas Corporation (Southwest Gas) filed oppositions to the motion for stay. We will deny the requests for rehearing and the motion for stay, for the reasons discussed herein.

Motion for Stay in Docket No. CP06-459-000

4. Buckeye Interests seek a stay of all actions on the part of Transwestern, including condemnation litigation proceedings, related to construction along the approved route through Buckeye. Buckeye Interests do not oppose action on the non-Buckeye portions of the route. Buckeye Interests maintain a stay can be instituted to prevent irreversible harm and that a stay will not inflict significant harm on any member of the public.

5. In the final Environmental Impact Statement (EIS) issued on September 21, 2007, and in the November 2007 Order, we reviewed routing options for the proposed Phoenix Lateral. The approved pipeline route through Buckeye is within an existing 330-foot-wide powerline easement for almost its entire length of approximately 27.8 miles. The alternative routings around part of the town diminish the distance through the Buckeye planning area from 18.9 to 10.2 miles,² but would require an additional 19 miles of pipe,

² We considered two separate routes to avoid traversing Buckeye, identified as the North and South Alternatives. But for a deviation of a little less than two miles to steer north or south of a Central Arizona Project canal, the two alternatives follow the same path, varying from the approved route at milepost (MP) 136.3 and rejoining that route at MP 162.7. In this order, since the comparative merits of the North and South Alternative routes are not at issue, we will simply refer in the singular to the alternative route, and compare it to the approved route.

15,000 horsepower (hp) of compression, 220 more acres of construction right-of-way, and 115 more acres of permanent right-of-way. We approved the proposed shorter route as environmentally preferable.

6. The Commission may issue a stay when justice so requires,³ and in so deciding, the Commission considers (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁴ If the Phoenix Lateral goes forward as approved, Buckeye Interests maintain it will be harmed by the presence of a pipeline for which there are “clearly inadequate mitigation measures,”⁵ with dozens of landowners subject to eminent domain actions for which they “will be forced to expend resources to contest” or “permanently surrender their property rights.”⁶ Further, current residents will have to endure daily disruptions caused by construction, developers will have to redraft plans for the configuration of future communities, and Buckeye will have to create and install emergency response systems. In contrast to these alleged irreparable harms, Buckeye Interests insist the record provides no evidence of how a delay would harm Transwestern, other than thwarting its “desire to generate additional profits as soon as possible.”⁷ Finally, Buckeye Interests maintain that a stay will serve the public interest by precluding the partial or complete installation of a pipeline in a location that is later found to be improper. In the motion for stay, Buckeye Interests incorporate their rehearing request, wherein they argue that the alternative route, rather than the route through Buckeye, is preferable.

³ 5 U.S.C. § 705.

⁴ See, e.g., *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,238 (2007) and *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,320 (2007).

⁵ Buckeye Interests’ *Motion for Stay*, at 5.

⁶ *Id.*, at 6.

⁷ *Id.*, at 8.

Opposition to Motion for Stay

7. Transwestern, Salt River, Arizona Public Service Company,⁸ and Southwest Gas oppose the motion for stay.⁹ Transwestern contends Buckeye Interests have presented no evidence that the project will inflict irreparable injuries, characterizing Buckeye Interests' described injuries as speculative and unproven. Transwestern states that its project's impacts will be "largely limited to the confined period of actual construction."¹⁰ Transwestern asserts that were the Commission to stop work on the project, Transwestern, its customers, and the gas consumers to be served would suffer "significant, real and immediate harm."¹¹ Transwestern urges the Commission to weigh the self-interest of the Buckeye developers against the broader public interest, particularly that of bringing an alternative source of competitively priced gas into a growing market currently served by a single interstate pipeline.

8. Salt River endorses Transwestern's assertions. Salt River stresses that Buckeye Interests omit mention of the fact that "virtually the entire pipeline route through the Buckeye corridor is in the transmission right-of-way maintained" by Salt River; thus, "the location of the pipeline will pose minimal disruption of any planned development outside of that right-of-way except perhaps during the construction period."¹²

9. Arizona Public Service Company states the motion for stay presents no new issues and does not demonstrate any evidence of irreparable harm. Southwest Gas asserts that a stay would deprive the market of a necessary supply of additional gas, emphasizing that if the Phoenix Expansion Project is not constructed, or if its fall 2008 in-service date is

⁸ Arizona Public Service Company is an electric utility involved in the generation, transmission and distribution of electric power and electric services to residential, commercial, industrial and agricultural customers in 11 of Arizona's 15 counties.

⁹ Salt River, Arizona Public Service Company, and Southwest Gas have executed precedent agreements with Transwestern for long-term, firm service using the Phoenix Expansion Project facilities.

¹⁰ Transwestern's *Opposition to Motion for Stay*, at 2.

¹¹ *Id.*

¹² Salt River's *Opposition to Motion for Stay*, at 3.

delayed, then either El Paso or Southwest Gas would have to construct new pipeline facilities, thereby “creating environmental and other impacts not recognized in movants’ stay request.”¹³

Commission Response

10. In brief, we find that while Buckeye Interests and affected landowners will incur financial costs and practical inconveniences, these do not constitute irreparable injury; further, we find that on balance, the public interest lies in the timely completion of the Phoenix Lateral along the approved route through Buckeye. Buckeye Interests’ substantive arguments for a stay appear in its request for rehearing. We discuss the merits of the request for rehearing below, and deny rehearing. For the same reasons that we deny Buckeye Interests’ rehearing, we deny its motion for stay.

Requests for Rehearing in Docket No. CP06-459-000

11. Buckeye Interests and Mainspring filed timely requests for rehearing. Transwestern filed an answer to Buckeye Interests. Although our rules do not permit an answer to a request for rehearing,¹⁴ we may, for good cause shown, waive this rule.¹⁵ We do so in this instance to assist us in the decision-making process.

Buckeye Interests’ Rehearing Request and the Commission’s Response

12. Buckeye Interests are concerned with the portion of the Phoenix Lateral that will pass through Buckeye. Buckeye Interests state the route through Buckeye will impinge on existing and prospective homes (including 36 master-planned communities), schools, office complexes, retail businesses, and public facilities. In its request for rehearing, Buckeye Interests raise several procedural matters, which we address in advance of our consideration of Buckeye Interests’ substantive objections.

Adequacy of Notice and Opportunity to Comment

13. Buckeye Interests renew their claim that interested parties were not provided adequate notice and an opportunity to present comments, particularly in the earliest

¹³ Southwest Gas’ *Opposition to Motion for Stay*, at 2.

¹⁴ 18 CFR §§ 385.213(a)(2) and 385.713(d)(1).

¹⁵ 18 CFR § 385.101(e).

public hearings, and that interested parties were hampered in assessing the merits of the proposal because Transwestern failed to make sufficiently detailed and accurate information available. We reject these assertions for the same reasons we did before.¹⁶ Notice of public meetings was timely and sufficiently widespread and the number and location of meetings was adequate to permit potentially interested persons to attend and express concerns.

14. As we observed in our November 2007 Order, meeting sites were selected to minimize the distance most people would have to travel; consequently, given the comparatively modest size of Buckeye's current population, initial meetings were not held in Buckeye, but in nearby, more populous communities. We note a technical conference was held in Buckeye on December 14, 2006, to discuss potential project-related impacts on approved and proposed developments in the areas, and was attended by local government officials, developers, home builders, and others. With respect to the public's opportunity to obtain and comment on information concerning the proposal, we found that deficiencies in the information in Transwestern's initial application were cured by its subsequent supplemental submissions. To date, we have accepted and responded to all public comments filed in this proceeding, including those submitted beyond the allotted time periods. In addition, in our consideration of rehearing requests, we found no instances of inaccurate or inadequate information affecting any of the material issues under review.

15. Buckeye Interests repeat the previously-expressed objection that a route deviation was presented in the final EIS that impacted the Tartesso West development without prior consultation with the developer, Stardust-Tartesso. Notice of the proposed route change was first made available on August 9, 2007, when Transwestern filed seven deviations, one impacting Tartesso West. After the final EIS was issued on September 21, 2007, describing the deviation, Stardust-Tartesso objected, and we reviewed and responded to Stardust-Tartesso's objections in the November 15, 2007 Order. As we explained:

It is common for route deviations to be proposed throughout the environmental review process as companies develop final engineering designs in response to input from the public and the Commission. In cases where a route variation could result in significant adverse environmental impact, the Commission provides for notice and comment. However, as

¹⁶ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 67-74.

discussed in section 3.4.2.5 of the final EIS, in this instance we concluded that the Tartesso West development deviation was warranted and would result in limited impact on that development.¹⁷

Given that Stardust-Tartesso has had the opportunity to state its case against the routing deviation twice – in its objection to the final EIS and on rehearing – and that we have concluded the deviation will have only a limited impact, we affirm our prior holding on this issue.

Request for a Full Evidentiary Hearing

16. In the November 2007 Order, we found no need to initiate a full evidentiary hearing, as requested by several parties, because the paper hearing documented by the written record in this proceeding provided an adequate forum for reviewing and resolving all the issues. Buckeye Interests disagree, and maintain that parties opposing the Phoenix Expansion Project “submitted project-specific expert studies and other evidence to address the major issues in this case ... that clearly demonstrate the existence of material fact issues.”¹⁸ We acknowledge receipt of such studies and evidence. We gave these studies and information careful consideration, and as a result, we reached a finding, affirmed here, that there are no material issues of fact in dispute that cannot be resolved on the basis of the existing written record.

Scope of the Project under Consideration

El Paso’s Project to Add Compression to its East Valley Lateral

17. Buckeye Interests argue that our review of Transwestern’s application should have taken into account El Paso’s request in Docket No. CP07-448-000 to add compression to the East Valley Lateral.¹⁹ We found, and find, no reason for integrating our deliberations in these separate proceedings. In Docket No. CP06-459-000, our engineering review of Transwestern’s proposed project demonstrated that Transwestern will be able to transport its specified volumes and meet its contractual delivery pressures without the need for additional compression. If the pipeline were to follow the longer alternative route,

¹⁷ *Id.*, P 119.

¹⁸ Buckeye Interests’ *Request for Rehearing*, at 59.

¹⁹ *See El Paso Natural Gas Co.*, 122 FERC ¶ 61,132 (2007).

Transwestern could no longer meet the operational parameters and contractual commitments described in its application without installing an additional 15,000 hp of compression.²⁰ El Paso's proposal in CP07-448-000 has no bearing on Transwestern's ability to meet its own obligations.

18. As noted in Transwestern's application, when El Paso acquired the East Valley Lateral, it stated that if it were later obliged to relinquish part of its full ownership interest, it would then evaluate whether it would need to install additional compression to maintain service levels and its capacity entitlement in the East Valley Lateral.²¹ Following notification of Transwestern's intention to obtain a partial ownership interest by exercising a repurchase option, El Paso determined that to meet its anticipated market demand in the Phoenix area, El Paso would need to install compression on the East Valley Lateral; El Paso proposed to do so in Docket No. CP07-448-00. The compression proposed by El Paso is designed to enable El Paso to meet its obligations to Transwestern pursuant to the parties' service agreement and to provide capacity to serve El Paso's own markets. Accordingly, in answer to Buckeye Interests' complaint that neither the final EIS nor the order address El Paso's adding compression to the East Valley Lateral, or take into account these facilities' environmental and other impacts, we reaffirm that there was no cause to consider El Paso's proposal to add compression in this Transwestern proceeding, as the two projects are independent. Issues related to El Paso's request to add compression, including environmental and other impacts, were addressed in the Docket No. CP07-448-000 proceeding.

Potential Future Expansions of the Phoenix Expansion Project

19. Buckeye Interests reference, again, Transwestern's representations to the financial community that it may seek to add compression to the authorized expansion facilities

²⁰ In response to objections to our conclusion that the longer route would require approximately 15,000 hp of new compression, we sought more detailed information from Transwestern to verify our conclusion. Buckeye Interests complain that there was insufficient time to review and rebut the data Transwestern submitted. As a practical matter, Buckeye Interests would not have been accorded this opportunity, as the Commission agreed to treat Transwestern's modeling information as privileged and confidential. The record does not contain an alternative analysis to demonstrate that the longer route could function without compression or that the shorter route will also require compression.

²¹ See Transwestern's *Application for Certificate Authorization*, at 20 (Sept. 15, 2006) and *El Paso*, 115 FERC ¶ 61,074, P 9 (2006).

shortly after their completion, insisting this prospect argues for discounting the adverse environmental impact attributable to the alternative route's need for compression, since Transwestern will be adding compression regardless of the route. As noted above, as described in the application before us, the Phoenix Expansion Project will be fully functional without any additional compression. If this were not the case, we would reject the application (or offer Transwestern an opportunity to amend it). In our November 2007 Order, we characterized such discussions as speculative, because despite a company's public and private description of its prospects for growth, a project is not subject to our consideration until an application has been filed. With respect to the Phoenix Expansion Project, Transwestern has yet to indicate to the Commission any intent to add to the facilities that were authorized in the November 2007 Order. The fact that the company may have discussed such a possibility with the financial community does not make it concrete enough to warrant additional environmental analysis.

Need for the Phoenix Expansion Project

20. Buckeye Interests maintain there has been an insufficient showing of need for Transwestern's expansion, and believe that other energy projects or conservation measures could make available energy equivalent to the gas that Transwestern's expansion would otherwise provide. We find the record contains a more than adequate showing of need, as evidenced by the fact that Transwestern (1) will assume the financial risk of the new facilities (thereby insulating its existing customers from any underrecovery of expansion costs) and (2) has submitted precedent agreements for firm service for 370,000 Dth/d, with 345,000 Dth/d committed for a 15-year term, representing 74 percent of the capacity of the Phoenix Lateral and 99 percent of the capacity of the San Juan Loops. We considered load management and determined that it is not a feasible alternative on the only other interstate pipeline serving the region.²² We also considered energy conservation and renewable energy options, which we recognize can play an important role in the future of the United States energy sector and could help to reduce natural gas use, but we found that these alternatives do not eliminate the projected need for additional gas supplies,²³ particularly with respect to gas for electric power generation, which is anticipated to grow significantly in the region. We found no other energy project proposals capable of serving as viable alternatives to the Phoenix Expansion Project.²⁴

²² See *Final EIS, Volume I*, at 1-2.

²³ *Id.*, at 3-2, 3-3.

²⁴ Buckeye Interests refer specifically to Kinder Morgan Energy Partners, LP's
(continued...)

21. Buckeye Interests argue there has not been a convincing showing that the project is needed, since Transwestern has not found customers willing to pay the full recourse rate. Buckeye Interests interpret the fact that customers have executed precedent agreements for firm service at negotiated rates that are less than the recourse rate as an indication that expansion project revenues will not cover expansion project costs. Buckeye Interests question whether Transwestern relied on the lesser revenues it would derive from its “cut-rate contracts” in reaching its conclusion that the longer, more expensive, alternative route around Buckeye, or the implementation of additional, more expensive, safety measures, would be economically unacceptable. We find these matters do not detract from Transwestern’s demonstrated need for the project.

22. The Commission determines an initial rate based on its assessment of what a proposed project is likely to cost to put into service. Prior to the facilities being placed in service, this initial rate may be adjusted up or down once the estimated costs are translated into actual costs. Ideally, the rate approved will be no more than needed to enable a company to generate revenues and attract capital sufficient to operate and maintain its facilities. Following this approach, we have established an initial recourse rate in this case. However, the Commission’s policies accommodate rate negotiation.²⁵ The fact that Transwestern has agreed to provide service to certain customers at rates less than the approved recourse rates has no bearing on the need for the project. Companies frequently enter into agreements to provide service at less than the recourse rate for any number of legitimate business reasons. In this case, Transwestern comments that while it might have entered into long-term transportation agreements at a higher initial recourse

proposed acquisition of the Silver Canyon Pipeline Project in Arizona and El Paso’s proposed salt cavern storage facility near Eloy, Arizona. We are unable to determine whether these projects might meet the objectives of Transwestern’s Phoenix Expansion Project, or would be environmentally preferable alternatives, because sufficiently detailed information about these prospective projects remains unavailable. We are not aware of any other project or combination of projects that could serve as a viable alternative to the Phoenix Expansion Project.

²⁵ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (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 Company 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).

rate, that recourse rate would be expected to decline over time to reflect its facilities' depreciation; Transwestern instead agreed with its customers on a reservation rate based on the average cost of service rate over 15 years, an arrangement which it declares provides rate stability and certainty for its transportation customers and for gas consumers. Accordingly, Transwestern rejects the implication that its negotiated rates are inadequate to ensure the economic viability of its project. This explanation is convincing.

23. How Transwestern reached the conclusion that the alternative route would be uneconomical is irrelevant to our decision. In comparing alternative routes, we make an independent decision on engineering and environmental issues, and condition a company's authorization on its implementing those measures that we deem to be required by the public convenience and necessity. Had we found good cause to adopt the alternative route, we would have adjusted Transwestern's recourse rates to reflect the difference in the authorized project's costs. At that point, Transwestern would have been presented with the choice of committing to implement the stipulated changes, withdrawing its proposal, or appealing the Commission's decision. Thus, Transwestern's statements regarding the financial impact of adding distance to the route or burying the pipeline deeper, while relevant to Transwestern's decision on whether or not to proceed with its project as modified, did not determine our decision on where to locate the pipeline or what conditions to impose on its installation.

24. Finally, Buckeye Interests repeat the assertion that because Southwest Gas is committed to providing gas to serve developments in the area, there is no need for the additional gas supplies that Transwestern's expansion will provide. As we observed in the November 2007 Order, Southwest Gas has (1) entered into firm service agreements with Transwestern; (2) stated its expectation that the expansion will benefit Southwest Gas' Arizona customers by providing supply reliability and pipeline-on-pipeline competition; and (3) declared that Transwestern's expansion will reduce the amount of future transmission and distribution infrastructure that would otherwise have to be built to serve the increasing energy needs of the area west of Phoenix.²⁶ Southwest Gas affirms its position in comments opposing Buckeye Interests' motion for stay, asserting that the Phoenix Expansion Project "is critical to the future energy needs of the State of Arizona and to Southwest's customers," and that if the project does not go forward, then another

²⁶ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 127.

party, presumably El Paso or Southwest Gas, will have to construct pipeline facilities to supply the Arizona market's needs.²⁷ Southwest Gas' statements provide a convincing explanation of the need for Transwestern's Phoenix Expansion Project.

Deliberative Process

25. Buckeye Interests suggest that the Commission is inclined to expedite project authorizations at the expense of a thorough review or a rejection. This is not true. While the public interest requires that applications for needed gas infrastructure be processed expeditiously, this does not reflect a willingness on our part, as Buckeye Interests imply, to abbreviate the review of project applications or to curtail oversight of companies' compliance with their certificate requirements. We concur with Buckeye Interests' observation that not every proposed project merits certification. In this case, however, after taking a hard look at the project Transwestern had proposed, balancing the project's expected benefits against its potential drawbacks, including adverse impacts that Buckeye Interests describe, we determined the project to be required by the public convenience and necessity.

26. Buckeye Interests claim that Transwestern has not been forthcoming with detailed project information, thereby hampering cooperating agencies in their assessment of the project. In our capacity as the lead agency coordinating the environmental review of the Phoenix Expansion Project, we have received no communication from other agencies that Transwestern is deficient in providing information to them needed to assess the project. Further, were Transwestern to withhold information from or provide inaccurate information to other agencies, final action by these agencies, which are responsible for issuing federal approvals essential for the project to proceed, would be delayed.²⁸

²⁷ Southwest Gas' *Opposition to Motion for Stay*, at 1 and 2.

²⁸ Buckeye Interests specifically identify the U.S. Department of the Interior's Bureau of Land Management and the U.S. Department of Agriculture's Forest Service as agencies in need of information. We note that on December 7, 2007, Transwestern filed with the Commission the final Plan of Development prepared under the direction of the Bureau of Land Management, the Forest Service, and the U.S. Department of the Interior's Bureau of Reclamation. This Plan of Development, which includes a project description and construction procedures, was used as a basis for the Bureau of Land Management in issuing Transwestern their Record of Decision and Temporary Use Permits for the Phoenix Expansion Project. Similarly, the U.S. Army Corps of Engineers

(continued...)

27. In the November 2007 Order, we adopted a routing variation to ensure a safe crossing of the Gila River that requires Transwestern to obtain a permanent easement over a single lot in the Enterprise Ranch development.²⁹ Buckeye Interests ask that we condition Transwestern's authority to cross this lot upon Transwestern's submission of documentation that it has consulted with the developer on route variations and other mitigation measures to minimize impacts, with Transwestern only being permitted to proceed after it obtains written approval from the Commission following its review of the submitted documentation.³⁰ We believe this would be redundant, since Transwestern is already obliged to obtain written approval from the Commission before it can undertake construction on the section of the project that will cross the Enterprise Ranch development. Before issuing such approval, we will review the intended route and mitigation measures to determine whether they are acceptable.

28. Buckeye Interests make a general allegation that the environmental analysis portion of our EIS³¹ is insufficiently detailed to "enable those who did not have a part in

has found Transwestern's information adequate to issue its approval, stating that the project will not result in more than minimal individual cumulative adverse environmental effects.

²⁹ See *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 116 and *Final EIS, Volume I*, at 3-47.

³⁰ Buckeye Interests points out that we imposed these same conditions on Transwestern with respect to the deviation of its pipeline's route through the Desert Creek development. See *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175, Environmental Condition No. 13. We elected to treat the two developments differently because the route across the smaller Desert Creek development is approximately twice as long (a mile versus a half-mile), and has a greater potential economic impact since it bisects the planning area, whereas the route across Enterprise Ranch intrudes across a corner, affecting no more than 3.0 acres of the 3,460-acre development; in addition, while there are several options for placing the pipeline through Desert Creek, this is not the case with the route through Enterprise Ranch, as it must follow an alignment that will allow for a straight crossing of the Gila River and avoid technical difficulties associated with constructing too close to the existing El Paso pipelines at the rock bluff on the west side of the river. In view of these differences, we did not, and do not, find a need to impose the same consultation condition for the route deviation affecting the Enterprise Ranch.

³¹ *Final EIS, Volume I*, Chapter 4, 4-1 to 4-221.

[the EIS's] compilation to understand and consider meaningfully the factors involved."³² We disagree. Our EIS provides a comprehensive and detailed review of all of the project's environmental impacts. Where Buckeye Interests present specific allegations of inadequacies in the EIS, we respond below.

Balancing Benefits against Costs

29. Buckeye Interests allege the Commission's assessment of the route through Buckeye was "fundamentally skewed toward Transwestern's interests,"³³ and that it did not balance the interests, in particular the economic hardship the project will impose on landowners and local government, as prescribed in the Commission's policy statement on new facilities.³⁴ While Buckeye Interests may disagree with the outcome of the Commission's balancing, it is not accurate to contend such a balancing did not take place.

30. In this instance, the benefits we found included, in particular, the opportunity to bring additional gas supplies, from a different source, via a second gas transportation service provider, into a growing market currently dependent on gas supplied by a single transportation provider. These are among the benefits described in our *Policy Statement on New Facilities*, which states that the "types of public benefits that might be shown are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives."³⁵ Buckeye Interests claim the expected benefit of creating downward pressure on gas prices "is a complex idea, and requires analysis."³⁶ Given the current lack of excess capacity on El Paso's facilities bringing gas into the Phoenix region, and the trend in increased gas demand in that region, we are confident that there is no need for further analysis to endorse the proposition that bringing a new

³² Buckeye Interests' *Request for Rehearing*, at 85, quoting *Environmental Defense Fund v. Corps of Engineers*, 492 F.2d 1123, 1136 (5th Cir. 1974).

³³ Buckeye Interests' *Request for Rehearing*, at 5.

³⁴ *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities)*, 88 FERC ¶ 61,227 (1999); *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000) and 92 FERC ¶ 61,094 (2000).

³⁵ 88 FERC ¶ 61,227, at 61,748 (1999).

³⁶ Buckeye Interests' *Request for Rehearing*, at 71.

source of competitively-priced gas into a growing market, to be transported by only the second pipeline to serve that market, can be expected to induce competition as a check on prices.

31. In asserting that we “failed to disclose or even acknowledge the particular risks associated with the proposed pipeline route,” and that we “‘addressed’ the particularly unfavorable risk characteristics of the proposed route by assuming that they don’t exist,”³⁷ Buckeye Interests may misapprehend the foundation upon which our decision rests. The energy industry’s and regulatory agencies’ experience with risks associated with natural gas facilities, including accident analyses, is reflected in the measures to mitigate and manage those risks specified in the Commission’s authorization orders. In this case, in view of the requirements that will be applied to reduce the potential danger associated with a large, high-pressure gas transmission pipeline, we concluded that the risk of placing a portion of the Phoenix Lateral within the boundaries of Buckeye did not outweigh the benefits that the project is expected to provide. This determination was not generic and superficial, as Buckeye Interests claim, but was based on our past practice with locating large, high-pressure pipelines in populated areas.³⁸

32. Buckeye Interests reassert that we gave improper weight to the cost distinction between the proposed and alternative routes. As we explained in the November 2007 Order, our decision was based on an assessment of the comparative environmental impacts, and not on comparative costs.³⁹ We did note that Transwestern deemed the alternative route to be economically unacceptable, but this had no bearing on the outcome of our decision in this case.⁴⁰ We routinely direct companies to adopt environmentally preferable alternatives to an initially proposed route as a condition of a project’s

³⁷ Buckeye Interests’ *Request for Rehearing*, at 38.

³⁸ See, e.g., *Florida Gas Transmission Company*, 119 FERC ¶ 61,122 (2007) (authorizing modifications to the St. Petersburg lateral in Pinellas County, Florida, a DOT class 3 area) and *Natural Gas Pipeline Company of America*, 120 FERC ¶ 61,050 (2007) (authorizing a short segment of pipeline in the suburbs of Chicago, Illinois).

³⁹ As we do for all projects, we reviewed Transwestern’s cost projections for its project, as well as the anticipated cost for the alternative route, to verify that these costs were reasonable estimates.

⁴⁰ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 103 and *Final EIS, Volume I*, section 3.4.2.5, Buckeye Alternatives, at 3-12 to 3-21.

authorization, regardless of whether the company prefers to accept the associated costs (and we routinely permit companies to then revise their rates to incorporate the additional costs attributable to the revised routing).⁴¹

33. While Buckeye Interests take issue with several of our assumptions in comparing the two routes, our conclusion remains unchanged: the rejected alternative would result in a greater impact on soils, vegetation, wildlife, and visual resources, and require an additional 19 miles of 36-inch pipe, 15,000 hp of compression, 220 more acres of construction right-of-way, and 115 more acres of permanent right-of-way. Further, the approved route, for the most part, follows an existing, 330-foot-wide electric transmission line right-of-way, and so should require only minor adjustments to existing and anticipated land use patterns along this established utility corridor.⁴² We thus affirm our rejection of the proposed alternative.

34. Buckeye Interests assert that the final EIS provides no data to measure adverse impacts of Transwestern's project on groundwater resources. We disagree. Section 4.3.1.1 of the final EIS provides a detailed description of the groundwater resources in the project area, including the Active Management Areas referenced by Buckeye Interests. This description includes information regarding groundwater use, well yield, groundwater quality, and the hydrology of the principal aquifers crossed by the project. Section 4.3.1.2 of the final EIS identifies and discusses the federal and state protected groundwater resources crossed by the project. Section 4.3.1.4 describes the potential impacts that the project could have on groundwater resources and specifically notes that direct impacts on groundwater resources are unlikely given that groundwater depths are substantially greater than the trench depth over the majority of the pipeline route. Section 4.3.1.4 further describes the measures that Transwestern must implement to reduce the potential for the project to impact groundwater resources and to respond to an accidental release of fuel or other chemicals, thus limiting potential impacts on groundwater resources.

⁴¹ See, e.g., *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007).

⁴² Transwestern observes that co-location "within the existing power line easement is an efficient use of land for essential infrastructure," and those that "have chosen to locate homes adjacent to this long-standing electrical transmission corridor" do not have the same grounds to complain about placing a pipeline in an existing utility right-of-way as they would if the pipeline required a new right-of-way. Transwestern's *Opposition to Motion for Stay*, at 5, n. 9.

35. Buckeye Interests further assert that the descriptions of the mitigation measures that would be implemented to reduce impacts on waterbody crossings are too general. Again, we disagree. Pages 4-46 and 4-47 of the final EIS describe 15 specific measures that must be implemented to reduce potential impacts at waterbody crossings and note that additional mitigation measures are specified in Transwestern's Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures.⁴³ Section 4.3.2.3 describes Transwestern's site-specific crossing plans and mitigation measures for the major and sensitive waterbodies crossed by the project. Compliance with these measures will be ensured through the environmental compliance inspection and mitigation monitoring program described in section 2.5 of the final EIS.

36. Buckeye Interests state there is no discussion of the project's impact on protected native plants. Buckeye Interests overlook section 4.4.2 of the final EIS, which explains that Transwestern, in compliance with Arizona's Native Plant Protection Program, conducted surveys to identify areas of native vegetation within the proposed construction right-of-way that would be suitable for transplanting (*e.g.*, cacti, agave, ocotillo, desert trees, among others) and would allow third-party plant salvage of the suitable specimens. Transwestern is coordinating with the Arizona Department of Agriculture and the Central Arizona Cactus and Succulent Society to facilitate the society's salvage of plants, especially in the areas where cactus communities are dominant and many salvageable plants are present. In addition, as discussed in section 4.6.5 of the final EIS, Transwestern consulted with the Arizona Game and Fish Department and determined that the project could affect two Arizona salvage-restricted species, the Bigelow's onion and the strawtop cholla. We found that although the project may impact individual Bigelow's onion plants, it is not likely to result in population-level effects. With respect to the strawtop cholla, we found that due to the availability of habitat elsewhere, the project may impact individual plants, but is not likely to result in population-level effects on this species.

37. Buckeye Interests maintain that it is unable to assess the project's impact on vegetation because the Commission did not provide details describing how it determined the number of acres affected temporarily or permanently. Buckeye Interests also faults the Commission for not analyzing the effect on wildlife dependent on vegetation for sustenance and habitat.

38. The acres of vegetation affected by the project were provided by Transwestern in its Resource Report 3, associated appendices, and responses to the Commission's data

⁴³ See *Final EIS, Volume I, Appendices F and G.*

requests. The Commission reviewed and analyzed this information, and calculated the potential vegetation impacts by overlaying the project footprint onto vegetation maps.⁴⁴ As discussed in section 4.4.2 of the final EIS, temporary impacts were determined by using Transwestern's proposed construction right-of-way widths for the San Juan Lateral Loops and the Phoenix Lateral. A typical 75-foot-wide construction corridor was used for each of the customer laterals. Extra workspaces and aboveground facilities were calculated using similar methods based on the size of each individual site. Permanent impacts were also determined using this method; however, because vegetation on the pipeline right-of-way will be restored, and Transwestern does not propose to conduct routine vegetation maintenance, there are few permanent vegetation impacts associated with the proposed pipeline facilities. The majority of permanent impacts are associated with aboveground facility sites and permanent access roads.

39. Section 4.5.1.2 of the final EIS reviews the impact of the project on wildlife species and their habitats in the areas crossed by the pipeline facilities, and assesses the degree of impact depending on the type of habitat affected and the rate at which vegetation regenerates after construction. This section shows (1) the impact on developed/disturbed habitat will be minor, because the affected areas provide minimal habitat value and would be restored to near original condition following construction; (2) the impact on agricultural habitat will be relatively minor, because these areas receive regular disturbance and would be replanted either immediately following construction or during the next growing season; and (3) riparian habitat will recover relatively quickly due to the more prevalent moisture regimes in these areas, although it could take up to 30 years to reproduce the mature vegetation that would provide structural diversity similar to preconstruction conditions. However, native desert upland habitats could take between 10 and more than 100 years to become re-established, depending on the vegetation type. The impacts on these native desert upland areas will be greater due to the longer time required to regenerate. We nevertheless conclude that the effects on native desert habitats are not expected to have a significant impact on wildlife populations because the amount of the habitat that would be affected is relatively minor compared to the amount of habitat present in the surrounding areas.

40. Buckeye Interests contend the November 2007 Order did not give sufficient consideration to the impact of the pipeline's placement on property values. This objection indicates a misperception regarding the role of the Commission. While we take a project's impacts on land values into account as a factor in our public interest

⁴⁴ See *Final EIS, Volume I*, Table 4.4.2-1, at 4-63 to 4-64.

determination,⁴⁵ the Commission does not play a role in assessing land values in negotiations between landowners and a company, or in determining compensation due to landowners as a result of a project's intrusion on the use of their property. Buckeye Interests fault the Commission for proposing, as Buckeye Interests' characterize it, "that each landowner make his/her best deal with the pipeline company and then live with the consequences including resulting property tax issues."⁴⁶ We see nothing inappropriate in our explaining our lack of authority to determine the outcome of the eminent domain process. We repeat that in the event landowners are dissatisfied with the compensation offered by Transwestern, by law they are afforded the opportunity to obtain a fair value by presenting their case before a court.

41. Buckeye Interests claim the Commission neglected to fulfill the Executive Order No. 12898⁴⁷ directive that federal agencies consider project impacts that fall disproportionately on minority and low-income populations. As we stated in our November 2007 Order, "[a]lthough 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

⁴⁵ See, e.g., *Final EIS, Volume I*, section 4.8.5, Property Values, at 4-169, wherein we note a 2001 national case study by the Interstate Natural Gas Association of America that considered whether there was a significant impact on the sale price of properties along natural gas pipelines, and concluded that neither the diameter of pipeline nor the product carried significantly impacted sale prices.

⁴⁶ Buckeye Interests' *Request for Rehearing*, at 79. With respect to tax implications, we explained: "Property taxes for a piece of property are generally based on the actual use of the land. Construction of the pipeline would not change the general use of the land, but would preclude construction of aboveground structures on the permanent right-of-way. If a landowner believes that the presence of a pipeline easement reduces the value of his or her land, resulting in an overpayment of property taxes, he or she may appeal the issue of the assessment and subsequent property taxation to the local property tax agency." *Final EIS, Volume I*, at 4-169.

⁴⁷ *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 FR 7629 (Feb. 16, 1994).

minority or low-income populations.”⁴⁸ The EIS found that the project will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations and will provide some short-term job opportunities.

42. Buckeye Interests question the basis for adopting a deviation that resulted in placing the pipeline within the Tartesso-West development, complaining that the only justification for the deviation “is *Transwestern’s representation* that it was ‘requested’ by the Maricopa County Flood Control district.”⁴⁹ We confirm the accuracy of Transwestern’s representation: the Maricopa County Flood District did indeed request that the pipeline be moved to avoid an existing flood spillway. We acceded to this request, since we had no basis for challenging the Maricopa County Flood District’s expertise in determining whether the presence of Transwestern’s pipeline would pose a challenge to the safe and reliable operation of its flood control structure. However, in addition, we also took into consideration the impact of the route deviation on the Tartesso-West development. We found the impact to be limited, given (1) the relatively modest amount of permanent right-of-way (1.1 acres) required compared to the overall size of the development (3,889 acres); (2) the orientation of the proposed alignment across the southwestern-most corner of the development; and (3) that development of the section of Tartesso-West to be crossed by the pipeline is already constrained by the nearby waste water treatment plant and dry wash.

43. Buckeye Interests are concerned that the location of the pipeline downstream of the waste water treatment plant and within two ephemeral washes could make it susceptible to damage from discharges from the treatment plant or flood waters. The EIS considered this prospect, finding that “[t]ypically, the pipeline would be buried at a minimum depth of 4 feet beneath major washes and named waterbodies,” and that “Transwestern would install external weighting to the pipeline to prevent upheaval during flood events for crossings of major washes and named waterbodies that have earthen beds.”⁵⁰ Further, Transwestern will have to install its pipeline at the depth required by the Arizona Department of Environmental Quality. Finally, in addition to burying the pipeline deeper at scour-prone locations, Transwestern must implement best management practices during and after construction to maintain the water quality of any stream or wetland adjacent to the construction work area, conduct monthly aerial pipeline

⁴⁸ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 42, n.26.

⁴⁹ Buckeye Interests’ *Request for Rehearing*, at 88.

⁵⁰ *Final EIS, Volume I*, at 4-14.

inspections to monitor the stability of the pipeline right-of-way, and correct any inadequate cover resulting from a sequence of high rain events.⁵¹ We believe these measures will be adequate to protect the pipeline from the scouring impacts due to discharges or flooding.

44. Buckeye Interests worry the pipeline's location could interfere with road construction along the western edge of Tartesso Unit 5. We do not expect this to be the case, given that pipeline construction across paved and unpaved roads must be in accordance with the requirements of applicable road crossing permits and approvals.⁵² We anticipate Transwestern will be able to coordinate construction activities to minimize disruption to road improvement and pipeline installation schedules.

45. Buckeye Interests complain that municipalities through which the pipeline passes will be forced "to finance additional police, fire, and emergency response personnel."⁵³ Buckeye Interests do not explain why the presence of a pipeline would compel a municipality to undertake expenditures above and beyond those it would normally incur. Because we are not provided with any evidence that the presence of a pipeline will impose a burden on municipalities to fund additional personnel, and because we are not provided with any quantification of this alleged burden, we find no cause to or means to review this matter.

Environmental and Safety Requirements

Methodology for Assessing the Proposed Project

46. Buckeye Interests find our methodology for assessing the project's risks to be suspect because of the similarity of our environmental analysis in this case to that in other cases. What Buckeye Interests characterize as "cookie-cutter" and "canned," we view as a methodology designed to ensure consistency. Our environmental analysis of different projects follows a deliberative, and deliberately similar, set of procedures – in effect, an ordered checklist – so that each of the potential environmental impacts of a proposed project receives meaningful review. Thus, for different projects, the titles of the sections of the table of contents of the EIS, the description of the factors taken into account, and

⁵¹ *Id.*

⁵² See *Final EIS, Volume I*, section 2.3.2, Special Construction Techniques; Road, Highway, and Railroad Crossings, at 2-22 to 2-23.

⁵³ Buckeye Interests' *Request for Rehearing*, at 83.

conclusions may be identical. However, our evaluation of environmental impacts proceeds on a per project basis; i.e., we assess the facts specific to each particular project, with the outcome a result of the individual characteristics of each particular project.⁵⁴

47. Buckeye Interests observe that in explaining our method of assessing project applications in our November 2007 Order, we commented that we employ “a similar standard of review” because “gas facilities are designed and constructed to meet safety standards that apply nationwide.”⁵⁵ Buckeye Interests object to this reliance on national standards, stating that risks rise where backhoes are active⁵⁶ and a ruptured pipeline can do more damage in residential areas than unpopulated areas. The standards that apply nationwide are designed to take into account the activities that occur in, and the character

⁵⁴ For example, in this case, after reviewing land use along the proposed route, we directed Transwestern to alter its proposed routing to circumvent a waste disposal landfill, where heavy, earthmoving machinery would have routinely been active above the proposed route. *See* Environmental Condition No. 11 of the November 2007 Order.

⁵⁵ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 113. The Commission’s authorizations incorporate the federal safety standards established by the U.S. Department of Transportation (DOT), which are set forth in 49 CFR Part 192.

⁵⁶ With respect to pipeline failures, as stated in Table 4.11.2-1 of the final EIS, Volume I, impacts of “outside force” – i.e., damage due to mechanical equipment such as bulldozers and backhoes; earth movements due to soil settlement, washouts, or geologic hazards; weather effects such as winds, storms, and thermal strains; and willful damage – make up 38.5 percent of the incidents involving gas facilities between 1986 and 2005. Outside force incident data from 1986 through 2005 describe an incident rate of 0.10 per 1,000 miles of pipeline. *See Final EIS, Volume I*, Table 4.11.2-1, at 4-206. (We note that 2005 was the most recent incident data available, since at the time the final EIS was issued, DOT was still updating the 2006 incident data.) This relatively low incident level is based on pipelines that “vary widely in terms of age, pipe diameter, and level of corrosion control. Each variable influences the incident frequency that may be expected for a specific segment of pipeline,” with older pipelines having “a higher frequency of outside forces incidents partly because their location may be less well known and less well marked than newer lines. In addition, smaller diameter pipelines constitute a disproportionate number of older pipelines,” and “[s]mall diameter pipelines are more easily crushed or broken by mechanical equipment or earth movements.” *Id.*, at 4-207. Transwestern’s Phoenix Lateral will be new, well-known, well-marked, and large.

of, a gas facility's location.⁵⁷ Whereas Buckeye Interests disparage our "standard-issue mitigation measures," the measures applied in this case are selected to respond to the particular risk profile of this pipeline. We expect Transwestern's adherence to the specified safety and mitigation requirements will ensure the project will not result in significant adverse environmental impacts, will provide for remediation of unavoidable environmental impacts, and will safeguard the pipeline and the public.

Risk Assessment

48. Buckeye Interests assert that the Commission has "proceeded from the premise that pipelines are safe and that siting does not matter."⁵⁸ We clarify that in assessing Transwestern's application (and every other application) we proceed from the premise that installing and operating pipelines necessarily involves risk. With respect to risk, we review the characteristics of the facilities at issue, consider whether other activities might more safely serve the same ends, and compare the site of the proposed project with potential alternatives.

49. Buckeye Interests claim that in comparing the approved and alternative routes, we did not give sufficient weight to the "merits of an alternative designed to shift the locus of the risk to areas having a lower population density."⁵⁹ We disagree. We did not find a dramatic difference in the present state of land use along the different routes. Buckeye Interests make much of existing plans for the construction of housing projects along the approved route, but there are also plans for similar projects along the alternative route.⁶⁰

⁵⁷ See, e.g., the criteria that underlie DOT's definition of a "high consequence area," described in 49 CFR Part 192, Appendix E, Guidance on Determining High Consequence Areas and on Carrying out Requirements in the Integrity Management Rule.

⁵⁸ Buckeye Interests' *Request for Rehearing*, at 43.

⁵⁹ *Id.*

⁶⁰ See, e.g., *Final EIS, Volume I*, Table 3.4.2-1, Comparison of the North and South Buckeye Alternatives with the Corresponding Segment of the Proposed Phoenix Lateral Route (Mileposts 136.3 to 162.7), at 3-14 to 3-15, demonstrating that while the alternative route would reduce the length of the Phoenix Lateral across the Buckeye planning area by 8.7 miles, it would increase the length across the Tonopah Valley planning area by a still greater distance. As noted in the final EIS, the Tonopah Valley

Admittedly, developers adjacent to the approved route are further along in the process of seeking regulatory approvals and initiating marketing for their planned future communities, and a rise in the DOT class location standards⁶¹ within Buckeye appears likely to be triggered sooner than outside of Buckeye.⁶² However, no party to this proceeding takes the position that a decade hence the route through Buckeye will be fully residential while land along the alternative route will remain (as the route through Buckeye is today) largely unpopulated.⁶³ Consequently, as we observed in our November 2007 Order, the difference in development along the approved and alternative routes may be viewed as a matter of timing, since future developments can be expected to increase the population along both routes. The location, pace, and density of

Association, Inc. presented information on Tonopah Valley development plans and characterized the adoption of the alternative route as shifting impacts from one developing area to another.

⁶¹ DOT's population-based class location standards and the safety requirements that apply to each class are set forth in 49 CFR Part 192.

⁶²Buckeye Interests emphasize that once property owners have obtained the right to proceed with development as planned, it is then too late for a municipality to impose setbacks on parcels adjacent to the right-of-way. We find no cause to alter our decision in light of this. Our deliberations and decisions are intended to ensure that a project will comply with all federal regulatory requirements. In this case, the approved route can do so without additional land use restrictions, since the proximity of the pipeline to existing and planned structures will be in accord with all federal restrictions. State and local governments, however, may impose land use or other restrictions, provided such restrictions are not incompatible with the conditions of our certificate authorization.

⁶³ Buckeye Interests observe that "there is no basis in the record for drawing any conclusion about where development will take place and the Commission does not possess a particular expertise in Arizona real estate." Buckeye Interests' *Request for Rehearing*, at 49. We accept that there are numerous factors, some unknown and some unknowable, that will determine future population distributions in Arizona, and we make no claim to be able to accurately predict these distributions. Nevertheless, based on past patterns of growth in the region, and on developers' representations of their plans for the future, it appears that there will eventually be additional development along portions of both the approved and alternative routes. Regardless of whether development occurs along the alternative route, we had found that the approved route is not only acceptable, but environmentally preferable.

development aside, we stress our routing decision turned on the conclusion that placing Transwestern's pipeline through Buckeye along Salt River's existing electric line corridor is environmentally preferable, since the alternative would result in a greater impact on soils, vegetation, wildlife, and visual resources, by requiring additional miles of pipeline, additional compression, and additional right-of-way.

50. Buckeye Interests highlight risks associated with excavation around an underground gas pipeline. We gave careful attention to such risks in our EIS and concluded the risks could be reduced to an acceptable level by imposition of certain constraints on the pipeline's construction and operation.⁶⁴ We note that because the pipeline will share a wide right-of-way with an overhead electric transmission line for almost its entire length within Buckeye, the risk of excavation inadvertently rupturing the pipeline may prove less within Buckeye than in a remote rural setting where the presence of the underground pipeline is not so obviously announced by the presence of electric towers. As discussed in the EIS, Transwestern will work with developers and Buckeye to incorporate planned utility and street crossings into the final pipeline design (at Transwestern's expense). Further, the number and location of utility crossings will be limited and subject to close scrutiny – Salt River avers it will have to give its consent to any crossing of its right-of-way and states that the vast majority of such crossings will be located along planned roadways.⁶⁵ We affirm our finding that advance coordination among all interested parties regarding the ultimate location of utility crossings, the obligations imposed on Transwestern regarding the construction of its pipeline, and the obligations imposed on utilities that obtain easements across Transwestern's or Salt River's right-of-way provide assurance that excavation necessary to install utility lines can be undertaken without undue risk.

51. With respect to the requisite depth of the pipeline, Buckeye Interests would have us mandate a 14 to 20 foot depth through portions of Buckeye, *citing* studies submitted by protesting parties in this proceeding. However, burying a pipeline beyond a certain depth does not provide any meaningful additional margin of safety, but does impose an additional financial burden on companies, their customers, and gas consumers.⁶⁶ DOT,

⁶⁴ See *Final EIS, Volume I*, section 2.6, Operation, Maintenance, and Safety Controls, and section 4.11, Reliability and Safety.

⁶⁵ *Final EIS, Volume I*, at 3-20.

⁶⁶ Based on the same rationale, we rejected one study's recommendation that concrete blast walls be installed along portions of the route through Buckeye. Our regulatory role requires us to determine which practices and procedures are necessary to ensure an acceptable margin of safety. This determination will always be controversial

(continued...)

the federal agency charged with ensuring natural gas pipeline safety, has determined that the appropriate depth for pipelines in areas such as that in question is 36 inches. Notwithstanding our conclusion that conformance with DOT's standards would be appropriate here, Transwestern proposed a depth of 40 inches for portions of the approved route, which we have adopted.

52. Buckeye Interests assert that “there are *no* mitigation measures possible to protect residences or occupants against a leak-jet fire if the Phoenix Lateral is located within 15 feet of residential property lines,” and recommends a setback of 525 feet.⁶⁷ There is no evidence in the record that there is any significant likelihood that a leak-jet fire will occur. We cannot simply conclude a project should be barred because there is a theoretical risk, however small, that it could lead to a leak-jet fire or other adverse outcome. As we observed in the November 2007 Order, “compelling pipelines to avoid populated areas would preclude transport and delivery to the very areas where high-priority demands for gas are greatest.”⁶⁸

53. Previously, Buckeye referenced a report by Brown and Caldwell,⁶⁹ which recommended that no habitable structures be planned within 1,100 to 1,200 feet of the Phoenix Lateral. We repeat our previous observation that the Brown and Caldwell “report finds ‘that natural gas transmission pipeline facilities are safe modes of transporting essential energy to our nation’s cities and communities’ and that the potential for rupture of the Phoenix Expansion Project is ‘very low.’ These assessments are consistent with the pipeline safety data presented in section 4.11 of the final EIS, which document that serious pipeline accidents are rare.”⁷⁰ Given our determination that

because there will always be an additional step that could be taken that would offer an additional increment of safety. Here, we find that blast walls and a burial depth of 14 to 20 feet will not contribute significantly to the safety of the project. *See Final EIS, Volume I*, at 3-19.

⁶⁷ Buckeye Interests’ *Request for Rehearing*, at 61, *citing* a report prepared by LFR, Inc. and submitted by Stardust-Tartesso W-12 Inc. jointly with Pulte Home Corporation.

⁶⁸ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 108.

⁶⁹ The report is reproduced in the final EIS, Volume II, at II-433.

⁷⁰ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 109. In repeating the conclusion that accidents are rare, Buckeye Interests alleges the
(continued...)

routing the Phoenix Lateral through Buckeye does not present an unacceptable risk, and given that federal and Arizona regulations do not require setbacks, we reject Buckeye Interests' request for a 525-foot setback for the same reasons we rejected the request for a setback of double that distance in the November 2007 Order.⁷¹

54. Buckeye Interests allege the Commission has “refused to explain adequately why compliance with the Minimum Standards provides a sufficient basis to conclude that the Phoenix Lateral will not present an unacceptable risk if it is constructed along the Proposed Route.” We have explained that satisfying DOT’s safety standards,⁷² in conjunction with compliance with the additional constraints imposed in our November 2007 Order, ensure the Phoenix Lateral will not pose an unacceptable risk. The final EIS discusses our reasoning and procedures at some length, explaining that the “standards in the federal regulations become more stringent as the human population density in the vicinity of the pipeline increases,” with each area along a right-of-way classified “based on population density in the vicinity of the pipeline,” such that “more populated areas require higher safety factors in pipeline design, testing, and operation.”⁷³ In accord with DOT criteria, each section of the Phoenix Lateral’s route was reviewed and categorized

Commission has selectively focused on the report’s “portions that supported the ‘standard risk’ condition,” and neglected to undertake a “particularized assessment” of risks specific to the Phoenix Lateral. Buckeye Interests’ *Request for Rehearing*, at 63 (December 17, 2007). Buckeye Interests confuse semantics with substance, in that the “standard” criteria we employ to assess a proposed project necessarily includes an examination of the particular aspects of the project. For example, while we impose generic stream crossing and restoration requirements, based on our experience with past projects’ construction, these standard requirements are typically altered and adapted to the geography and environmental sensitivities particular to each project; similarly, the physical and operational characteristics of a facility are subject to standard requirements, such as a minimum thickness for the walls of sections of pipe, yet these requirements are altered according to the status of land use along the right-of-way.

⁷¹ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 110.

⁷² *See* 49 CFR Part 192.

⁷³ *Final EIS, Volume I*, at 4-199.

as class 1, 2, or 3 (there was no portion of the route that qualified as class 4, i.e., a location where buildings with four or more stories aboveground are prevalent), with more rigorous safety standards applied to the more populated areas.⁷⁴

55. Buckeye Interests complain that the requirements we apply to the Phoenix Lateral do not account for “construction activities common to subdivision and new town development, including the installation of water and wastewater infrastructure that will exceed the Phoenix Lateral in size and scope.”⁷⁵ Buckeye Interests endorse the Brown and Caldwell report’s assertion that “[w]ithout a complete prohibition on construction within, near or under the easement, it is unreasonable to expect that some impact to the pipeline will not occur whether intentionally or accidentally, through direct or indirect effect activity.”⁷⁶ We accept the premise that relocating the Phoenix Lateral (or any pipeline) to an area where there will never be any construction within, near, or under it would reduce risk; however, doing so would eviscerate the pipeline’s utility, as gas could no longer be transported to within the reach of an end user. Based on our experience, we believe the constraints we have imposed on Transwestern are adequate to ensure the integrity of the pipeline as development progresses along the right-of-way. Utilities are routinely installed along, across, over, and under existing gas pipelines, without incident.⁷⁷ In this case, the location and method of utilities’ installation will be reviewed in advance, as Salt River’s consent is required for any crossing of its easement. Salt River states that the vast majority of utilities will be placed along planned roadways, and thus will not be distributed haphazardly throughout its easement corridor.

⁷⁴ We determined that approximately 166.1 miles (65 percent) of the Phoenix Lateral would be located in Class 1 areas, 61.9 miles (24 percent) in Class 2 areas, and 27.1 miles (11 percent) in Class 3 areas. *See* Table 4.11.1-1 of the final EIS, Volume I, at 4-200, which presents class locations based on current population density and reasonably expected future development along the right-of-way.

⁷⁵ Buckeye Interests’ *Request for Rehearing*, at 62.

⁷⁶ Brown and Caldwell report, *Risk Informed Assessment of the Proposed Phoenix Expansion Natural Gas Transmission*, at 2.

⁷⁷ Buckeye Interests has urged the Phoenix Lateral be buried 14 to 20 feet below ground to permit future utilities to be installed over the existing pipeline. We have found this proposed departure from past practice to be unnecessary; current restrictions on utility construction have proved a reliable means of ensuring existing pipelines remain unaffected when new utilities are installed within the same right-of-way.

56. Buckeye Interests raise the prospect of a terrorist attack on the Phoenix Lateral, quoting our November 2007 statement that the “environmental impacts from a pipeline failure would be the same whether the damage was caused by intentional or accidental action”⁷⁸ as indicating “that the Commission elected to ignore the risk to human health and life.”⁷⁹ Obviously, this is not the case. Our statement was intended to point out that efforts to safeguard the public from the consequences of damage to an energy facility are largely the same regardless of the cause. Put bluntly, a worse case scenario involving a gas pipeline is likely to look substantially the same whether damage is done inadvertently or intentionally; consequently, we find no utility in distinguishing among possible causes. The safety and environmental compliance requirements we impose on energy facilities are to ensure the facilities’ physical and operational integrity, and thereby protect the facilities against all sources of harm, whether natural (*e.g.*, an earthquake) or by the hand of man.

57. As we pointed out in the November 2007 Order,⁸⁰ although we have no foundation for gauging the likelihood or location of a malicious act against any particular portion of the nation’s energy infrastructure, in our assessment of the expansion application, we took into consideration the data on pipeline incidents that do exist in determining where to site the pipeline and what conditions to impose upon it. We believe that the procedures and requirements developed to safeguard the public from inadvertent pipeline damage are equally applicable to safeguarding the public from intentional pipeline damage. Thus, the conditions we impose on a pipeline are designed to render it secure from all possible types of threats. Therefore, we believe our evaluation of the impact of a terrorist attack in Section 4.11.4 of our final EIS and the conditions we impose on Transwestern’s project in response, meet our NEPA obligation to take a hard look at this potential adverse impact as a part of our environmental review, as well as our public interest obligation to protect public safety.

⁷⁸ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 84.

⁷⁹ Buckeye Interests’ *Request for Rehearing*, at 75. Citing *Tri-Valley Cares v. Department of Energy*, 203 Fed. Appx. 105 (9th Cir. 2006) and *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016 (9th Cir. 2006).

⁸⁰ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 84-88.

Transportation Research Board Report

58. Buckeye Interests believe the Commission should have altered its approach to reviewing and regulating pipeline projects in response to a 2004 report by the Transportation Research Board (TRB)⁸¹ that included a look at means to enhance pipeline safety. Buckeye Interests stress the study's finding that:

Rational land use decisions that provide appropriate physical separation between people and pipelines could reduce the risk associated with the increasing numbers of people in proximity to transmission pipelines. Possible land use techniques include, for example, establishing setbacks; regulating or prohibiting certain types of structures (such as schools, hospitals, and apartment buildings) and uses near transmission pipelines, and encouraging, through site and community planning, other types of activities and facilities (*e.g.*, linear parks, recreational paths) within or in the vicinity of pipeline rights-of-way.⁸²

59. We have no objection to this finding; further, we see no inconsistency with the finding and the project as authorized. The approved route follows Salt River's established easement for 94 percent of its length through Buckeye. We would anticipate similar outcomes with respect to land use decisions for property located along an established utility corridor, whether the right-of-way is for underground gas lines or aboveground electric lines.

60. The TRB report suggests regulating or prohibiting certain types of structures and uses near transmission pipelines, and encouraging, through site and community planning, other types of activities and facilities within or in the vicinity of pipeline rights-of-way. This is largely a matter of local zoning. As the TRB report notes, "[l]ocal governments can establish rules governing structures and uses in the vicinity of pipelines."⁸³ The TRB

⁸¹ *Transmission Pipelines and Land Use: A Risk-Informed Approach*, TRB Special Report 281 (2004). The TRB is a division of the National Research Council, which serves as an independent adviser to the federal government and others, and is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

⁸² *Id.* at 7.

⁸³ *Id.* at 68. In this regard, Buckeye Interests argues we did not give proper consideration to local land use plans and zoning ordinances. While we do take these

(continued...)

study describes the Commission as responsible for “prescrib[ing] the width on new natural gas transmission pipeline rights-of-way.”⁸⁴ Nothing here is inconsistent with this description of how authority is distributed. Once the Commission prescribes the width of a right-of-way – as we have for the route through Buckeye, with that width being well within the bounds of Salt River’s existing 330-foot-wide powerline easement – any additional rules governing structures and uses along the right-of-way are the responsibility of state and local authorities. But for setting the boundary of the right-of-way, current federal and Arizona regulations do not require further setbacks.⁸⁵

61. While no natural gas project is without risk, our requirements, in conjunction with those of DOT, compel companies to adopt practices that reduce risks to an acceptable level. What constitutes an acceptable risk level is subject to reassessment by regulatory authorities, the industry, and the public. The TRB report is one such reassessment, and reflects the consensus of a committee “tasked to consider the feasibility of developing risk-informed guidance that could be used in making land use-related decisions as one means of minimizing or mitigating hazards and risks to the public, pipeline workers, and the environment near existing and future hazardous liquids and natural gas transmission pipelines.”⁸⁶ Buckeye Interests urge us to incorporate the TRB report’s recommendations as regulatory requirements (we note the TRB report does not propose establishing a specific setback distance). We believe that to do so would be inappropriate, as this would prejudice companies, customers, and communities that have relied on the existing statutory and regulatory scheme in planning and overseeing gas facilities. As stated in

factors into account in siting energy facilities, they do not dictate our final decision, which must be based on public safety and security criteria, and not on local regulations alone.

⁸⁴ *Id.*

⁸⁵ In declining Buckeye Interests’ request that we impose setbacks, we do not “hide behind the fact that other governmental agencies have not acted to establish setbacks,” as Buckeye Interests allege. Buckeye Interests’ *Request for Rehearing*, at 25. Rather, we have determined that Transwestern’s compliance with the requirements set forth in the November 2007 Order will ensure the facilities are constructed and operated in a safe, environmentally acceptable manner. We find that the more stringent mitigation measures sought by Buckeye Interests would not significantly improve public safety; therefore, we find no cause to exercise our discretion to impose any further constraints.

⁸⁶ *Transmission Pipelines and Land Use: A Risk-Informed Approach*, TRB Special Report 281, at ix (2004).

our November 2007 Order, the report “provides a framework for the continued study of pipeline safety’s deliberations.”⁸⁷ While we did take the TRB report into account in reaching our public interest determination, we view the report as a preliminary, advisory effort.

DOT Class Location Standards: 49 CFR § 192.5

62. Buckeye Interests argue the Commission should have required Transwestern to install pipe to meet the DOT’s class 3 standard in areas where population is predicted to grow, rather than to meet the class 1 or class 2 standard that applies to the areas today.⁸⁸ (Today, approximately 79 percent of the land that will be crossed by the proposed route in Buckeye is undeveloped open land.)⁸⁹ This approach would be inconsistent with our past practice, and would burden customers with rates incorporating costs to build and maintain facilities to meet unnecessarily rigorous standards. The Commission verifies that proposed facilities meet the currently-applicable DOT class standard. The Commission does not review historic population migration patterns, anticipate the results of the next census, contemplate the impact of changes in mortgage market fundamentals on planned residential communities, or assess any other indicia of the likely place or pace of future population growth or decline.⁹⁰ To do otherwise would be an inherently speculative undertaking. The Commission therefore confines the exercise of its authority to acting upon what is, not what may be.

⁸⁷ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 110.

⁸⁸ An upgrade in a location’s class status would affect, inter alia, the minimum required pipeline wall thickness, pipeline design pressures, hydrostatic test pressures, the inspection and testing of welds, and the frequency of pipeline patrols and leak surveys.

⁸⁹ Referencing the final EIS, Volume I, at 5-8 (September 2007), Transwestern emphasizes that of the approximately 6,000 acres of land that will be affected by the construction of the Phoenix Lateral, less than one percent is residential.

⁹⁰ We would not necessarily preclude the installation of facilities consistent with a higher DOT class standard that does not now apply. However, we would not necessarily permit the recovery of the full costs of such upgraded facilities. If Transwestern believes that population density along a construction corridor will inevitably rise rapidly, then it may prove financially advantageous to install facilities that will meet a more rigorous DOT class standard now, so as not to have to replace the facilities or restrict their operation later. We leave that calculation to Transwestern’s business acumen.

Transwestern's Future Obligations

63. Buckeye Interests ask that the Commission “make clear that if there are future changes to the [DOT] Minimum Standards or the adoption of other requirements that impose or cause additional costs due to the location or operation of the Phoenix Lateral, the Commission is retaining authority to incorporate such new or changed requirements into the Project’s certificate of public convenience and necessity.”⁹¹ We clarify that this is the case for all jurisdictional facilities and services.

Mainspring's Rehearing Request and the Commission's Response

64. Mainspring, a group composed of property developers, argues that in considering the impact of a right-of-way on housing development lots, the Commission employed “a wholly unsubstantiated ‘standard’ for determining how many of the lots” would be rendered unsuitable for home construction.⁹² In fact, in the November 2007 Order, we explain that our assessment of whether a home might be built on a lot was “based on the location of the permanent right-of-way on lots and the shape and orientation of the lots.”⁹³ Our effort to estimate which lots might be rendered unbuildable followed a rule of reason, reviewing the proposed pipeline’s placement in relation to the property lines. If the permanent right-of-way encroached on a lot, we deemed the lot unbuildable where a house of similar size to those already existing in the area could no longer be located on the lot. If the permanent right-of-way ran along the front of the property line, or extended along the length of the lot, or would force a house to be situated abnormally close to the property line fronting the street, as compared to nearby houses, the lot was also deemed unbuildable. Mainspring does not demonstrate that this standard was in any way inappropriate.

65. In any case, our decision on the merits of the pipeline’s possible routing did not turn on an exact count of affected lots; indeed, this was a relatively minor factor.⁹⁴

⁹¹ Buckeye Interests’ *Request for Rehearing*, at 28.

⁹² Mainspring’s *Request for Rehearing*, at 2.

⁹³ *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 138.

⁹⁴ As stated in the November 2007 Order: “we find that even if Mainspring’s count is correct – a difference of, at most, two lots each in the Terrazo and Solana Ranch North developments – this difference, while meaningful to Mainspring, is not significant enough to alter our conclusion that, on balance, the Pinal County El Paso Co-Location

(continued...)

Disputes over the issue of compensation for land needed for the pipeline will be resolved in negotiation between the landowner and Transwestern, or where necessary, in a court in an eminent domain proceeding.

66. Mainspring repeats its belief that we should have considered potential upgrades to El Paso's existing pipelines in analyzing the cumulative impact of Transwestern's new expansion, particularly where the two companies' pipelines will share the same right-of-way. Given that we are currently unaware of any effort on El Paso's part to upgrade its pipelines to meet more rigorous DOT standards, our consideration of such an undertaking by El Paso would be premature and speculative; accordingly, we affirm that the "timing, location, and specific measures that El Paso may implement in response to an increase in population density near its pipelines, and possible impacts of such measures, are unknown and beyond the scope of this proceeding."⁹⁵

67. Mainspring believes that by not considering future upgrades to El Paso's pipelines in a cumulative impact analysis of Transwestern's project, we have neglected to establish requirements for coordinating construction activities along sections of the Phoenix Lateral's route where the companies' pipelines will be co-located. If and when the companies find cause to modify their facilities, they will have to do so in accord with the terms of any authorization we grant them, which may well include case-specific construction requirements, and with the DOT federal safety standards governing construction and maintenance activities. Further, as noted in the November 2007 Order: "Transwestern and El Paso have committed to work together to ensure the safety of their facilities, personnel, and the community" and "we expect both companies to execute and implement formal agreements that set forth the rights and obligations of each party during construction and operation of their respective facilities."⁹⁶

68. Mainspring states that for sections of the proposed route, Transwestern has submitted alignment sheets to the Commission that show a wider easement than was authorized in the November 2007 Order, and attributes this to our failure to mandate the

Variation is the preferable route. The five developments crossed by the pipeline are expected to contain more than 10,000 homes; consequently, even if our estimate of the affected property is in error by as many as four lots, in weighing the two alternative routes, the balance still falls in favor of the Pinal County El Paso Co-Location Variation." *Order Issuing Certificate and Authorizing Abandonment*, 121 FERC ¶ 61,175 at P 136.

⁹⁵ *Id.* P 139.

⁹⁶ *Id.*

co-location of the two companies' pipelines. Further, Mainspring states that recent landowner surveys demonstrate that the location of El Paso's pipeline provides greater room for co-location than does the information provided by Transwestern. We will review these matters in the course of our ongoing assessment of the expansion project's construction. Adjustments to an ongoing construction project, such as minor routing variations and realignments, are not uncommon. Transwestern may not, however, obtain additional land for a temporary or permanent right-of-way without presenting sufficient justification and obtaining our explicit approval. Where we find a narrower easement than was initially authorized can be safely employed, or co-location to be practical along certain segments, we may modify the terms of our authorization accordingly.

69. Finally, Mainspring states that Transwestern's project "will inevitably contribute to greenhouse gas emissions due [to] the increased amount of natural gas transported in the new pipeline for combustion, as well as the attendant pipeline construction operations, use of compressor stations, system releases, and other sources of carbon dioxide and methane."⁹⁷ In view of this, Mainspring argues the Commission should have included an assessment of air emissions, and the impact of these emissions on climate change, in its consideration of the cumulative impacts associated with the Phoenix Expansion.⁹⁸

70. Air emissions attributable to the construction and operation of the project were reviewed in detail in the EIS. In considering the cumulative impact of these emissions, we concluded that because the expansion project activities "would take place over a large area; have varying construction schedules; and adhere to federal, state, and local regulations for the protection of ambient air quality, long-term cumulative impacts on air quality would not be anticipated."⁹⁹ Further, we found that "the Phoenix Expansion Project would be in conformance with the federal General Conformity requirements," and "because no additional compression would be installed, the proposed project would not add any stationary or permanent sources of NO_x, CO, VOC, PM₁₀, PM_{2.5}, or SO₂ to the

⁹⁷ Mainspring's *Request for Rehearing*, at 10.

⁹⁸ *Citing Center for Biological Diversity v. National Highway Transportation Safety Agency*, 508 F.3d 508 (9th Cir. 2007).

⁹⁹ *Final EIS, Volume I*, at 4-220. Transwestern will also have to comply with the mitigation measures described in the final EIS, Volume I, section 4.10.3, Air Emissions Impacts and Mitigation.

environment.”¹⁰⁰ We affirm our determination that the Phoenix Expansion Project, viewed in terms of its cumulative impact, will have an insignificant impact on greenhouse gas emissions and thus on global warming.

71. Mainspring urges us to also take into account air emissions attributable to the combustion of the gas supplies transported in the new pipeline. We had no cause to attempt to assess air emissions from the ultimate consumption of gas transported by the new pipeline because the end use of the gas is not a part of the Transwestern project.¹⁰¹

¹⁰⁰ *Id.* 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. We note that at the existing Bloomfield Compressor Station on the San Juan Lateral and the Seligman Compressor Station No. 1 on Transwestern’s mainline, a small amount of emissions will be generated by the operation and maintenance of the odorant facility. However, these emissions are considered insignificant activities and fall below applicable permitting thresholds.

¹⁰¹ Transwestern has stated that a significant portion of the expansion volumes will be delivered to gas-fueled electric generation plants. While we recognize the increasing role of natural gas in electricity generation, we note that the manner of ultimate consumption of gas moved through Transwestern’s expansion facilities is a variable not subject to meaningful quantification by the Commission. At issue in *Center for Biological Diversity v. National Highway Transportation Safety Agency*, as cited by Mainspring, was federal agency action on vehicle fuel efficiency standards, i.e., on federal requirements applicable to fuel consumption, in contrast to Commission authority over facilities and services for fuel transportation. The court faulted the agency’s environmental review of corporate average fuel economy (CAFE) standards for not including an assessment of vehicle emissions’ contribution to the cumulative impact on climate change and for not describing emissions in the context of other CAFE rulemakings. The court stated that in establishing the CAFE requirement, Congress intended to promote energy conservation, and stressed the significance of the agency’s action in view of the fact that CAFE standards impact U.S. vehicles that produce five percent of the entire world’s greenhouse gases. By contrast, the Commission’s action is authorization of pipeline facilities for the transportation of gas, not authorization for the burning of gas.

Request for Rehearing in Docket No. CP07-9-001

72. In 2006, El Paso acquired the East Valley Lateral from Salt River, subject to two transferable repurchase options.¹⁰² 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. Together, the repurchase options represent 242,500 Dth/d, i.e., 70 percent of the East Valley Lateral current capacity of 342,000 Dth/d.

73. In our November 2007 Order, we granted El Paso permission and approval to abandon by sale to Transwestern an undivided ownership interest in up to 70 percent of its capacity in the East Valley Lateral. In so doing, we rejected El Paso's proposed accounting treatment as inconsistent with the provisions of Gas Plant Instruction No. 5F (GPI 5F) in Part 201 of the Commission's regulations. El Paso disagrees, arguing that the Commission erred by (1) viewing the East Valley Lateral as an operating unit or system under the accounting regulations; (2) not permitting the abandonment by sale to be treated as a normal retirement subject to depreciation; (3) allocating the purchase price based upon the sustainable operating capacity available prior to connecting to the Phoenix Lateral, rather than taking into account the future expansion of the East Valley Lateral's capacity; and (4) not clarifying that El Paso's proposed accounting will not dictate the appropriate rate treatment for El Paso's service using the East Valley Lateral in its next rate case.

Commission Response

74. The Uniform System of Accounts (USofA) provides that when gas plant constituting an operating unit or system is sold, the difference, if any, between the net book value of the property, plus any costs of removal and the consideration received for the property, is to be included in Account 421.1, Gain on Disposition of Property, or Account 421.2, Loss on Disposition of Property, unless otherwise ordered by the

¹⁰² 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 for Abandonment* in Docket No. CP07-9-000, Exhibit U, at 3-5 (Oct. 16, 2006) and Transwestern's *Application for Certificate Authorization* in Docket No. CP06-459-000, Exhibit R, at 3-4 (Sept. 15, 2006).

Commission.¹⁰³ If the property sold does not constitute an operating unit or system, the sale is accounted for as a normal retirement and salvage, and recognized by crediting Account 108, Accumulated Provision for Depreciation of Gas Utility Plant.¹⁰⁴

75. As we have explained in previous cases, “operating unit or system” is a term of art.¹⁰⁵ While the USofA does not define “operating unit or system,” the Commission has developed criteria for determining whether a sale of an operating unit or system has taken place. The principal factors considered are whether customers are attached, the amount of investment, the character of the property, and continuity of operation. Therefore, when property is removed from service as a result of a sale, a determination is made on whether the transaction involves a sale of an operating unit or system based upon the above factors. Here, the East Valley Lateral was originally constructed by Salt River to serve its Santan Power Plant. After the sale by Salt River to El Paso, the East Valley Lateral has continued to serve Salt River’s Santan Power Plant, and it will continue to do so (as well as serving future customers in the Phoenix area) after El Paso’s sale of an undivided interest to Transwestern. Further, the amount of investment in the East Valley Lateral is significant, as demonstrated by the fact that El Paso paid Salt River a purchase price of \$33,295,779.¹⁰⁶

76. Given the continuity of operation of the East Valley Lateral, attached customers, and the substantial amount of investment, we reaffirm our previous determination that the East Valley Lateral constitutes an operating unit or system. The fact that the East Valley Lateral functions as an integrated part of El Paso’s system, and not as an exclusive delivery lateral, does not by itself control whether the property sold is an operating unit or system. All of the above factors must be considered on a case-by-case basis in determining the character of the property removed.

77. Also, as stated above, our accounting regulations give us the discretion to approve alternative accounting treatment related to the sale of an operating unit or system. We have approved alternative accounting treatment in a limited number of instances. All of these instances have involved cases where entities have proposed to give gains on the sale of an operating unit or system back to ratepayers by crediting the proceeds from the

¹⁰³ Gas Plant Instruction No. 5 (F).

¹⁰⁴ Gas Plant Instruction No. 10 (B).

¹⁰⁵ See, e.g., *El Paso*, 49 FERC ¶ 61,360 (1989).

¹⁰⁶ See *El Paso’s Request for Rehearing*, at 2.

disposition of the property to Account 108.¹⁰⁷ Thus, there was no conflict, as stated by El Paso, between our accounting and ratemaking rules in allowing Portland General to credit the proceeds from the sale of the Kelso-Beaver Pipeline to Account 108 in order to share the gain on the sale with ratepayers; as such, alternative accounting treatment is allowed under the USofA.

78. El Paso also argues that the Commission has approved pipeline proposals to treat dispositions of facilities as normal retirements using a more flexible approach than we applied in our November 2007 Order or in cases involving pipeline systems that appear very similar to the facilities deemed to be an operating unit in other cases. In support of its argument, El Paso refers to two Natural Gas Pipeline Company of America cases, one involving the sale of the Hooker Gathering System and the other the Sinclair Lips Facility.¹⁰⁸ El Paso also refers to a National Fuel Gas Supply Corporation case where the Commission allowed the sale of a storage facility to be treated as a normal retirement.¹⁰⁹

79. El Paso mischaracterizes these cases. In the *Natural Gas* cases, we allowed sales to be treated as normal retirements because they were both deemed to involve the sale of “isolated” laterals, and as such did not meet our criteria for being considered an operating unit or system. In the *National Fuel* case, the facilities sold were deemed to be an operating unit or system, but we allowed National Fuel to use its alternative accounting treatment as a normal retirement because National Fuel requested this treatment as a way to give the benefit of the gain on the sale of the facilities to its ratepayers.

80. El Paso errs in asserting that the sale of an undivided interest in a facility can never be considered an operating unit or system because the operation of the property can not be divided. It is irrelevant whether an undivided interest or a total interest is sold. In determining whether an operating unit or system is sold, we consider the nature of the property itself, rather than relying on whether a partial interest in the property was sold. There is no basis in our accounting rules for treating a sale of property differently

¹⁰⁷ See *B-R Pipeline Co. and Portland General Electric Co.*, 89 FERC ¶ 61,312 (1999); *National Fuel Gas Supply Corp.*, 85 FERC ¶ 61,045 (1998); and *Eastern American Energy Corp.*, 76 FERC ¶ 61,149 (1996).

¹⁰⁸ *Natural Gas Pipeline Company of America (Natural Gas)*, 81 FERC ¶ 61,390 (1997) and 77 FERC ¶ 61,300 (1996).

¹⁰⁹ *National Fuel Gas Supply Corporation (National Fuel)*, 85 FERC ¶ 61,045 (1998).

depending on whether a full or partial interest is sold. The Commission routinely approves the accounting treatment for the sale of undivided interests as operating units or systems.¹¹⁰

81. El Paso also errs in asserting that treating any property sold as an operating unit or system is inconsistent with the composite depreciation method. Composite depreciation rates are based on the weighted average estimated useful service lives of the depreciable property comprising the composite group. Gains and losses on the retirement of assets, except those related to operating units or systems, are credited, or charged to accumulated depreciation as normal retirements. Since sales of operating units or systems are infrequent or sporadic in nature, composite depreciation rates do not anticipate their sale. Thus, it is appropriate and required by the USofA to recognize gains or losses on the sale of operating units or systems currently in income in such instances, as to do otherwise would lead to a distortion of periodic income.

82. El Paso argues that even if capacity percentages are used to determine the appropriate accounting treatment, as the Commission has directed be done in this case, the percentages must employ a capacity for the East Valley Lateral that is based on its future expandability. El Paso does not identify any accounting principle or provision that would justify basing the allocation on speculative expansion projects that may never be realized. We reiterate that the allocation of the net book value between the undivided interests held by El Paso and Transwestern for accounting purposes must be based on the total certificated capacity of the East Valley Lateral as of the effective date of the transfer. Accordingly, for the reasons discussed above, we affirm the accounting treatment described in the November 2007 Order and deny El Paso's request for rehearing.

83. In addition to its request for rehearing, El Paso requests we clarify that the resolution of the accounting issues it raises on rehearing will not dictate the appropriate rate treatment of costs associated with the East Valley Lateral in its next rate case. El Paso states that the acquisition of the East Valley Lateral provides its customers operational benefits, including the ability to offer more flexible and higher quality services. El Paso further states that the Commission itself recognized these operational benefits in orders approving the East Valley Lateral transactions.¹¹¹ El Paso believes that

¹¹⁰ See, e.g., *Trunkline Gas Company, LLC and Gulf South Pipeline Company, LP*, 114 FERC ¶ 62,268 (2006).

¹¹¹ See *El Paso*, 115 FERC ¶ 61,074 (2006) and 121 FERC ¶ 61,175 (2007).

these benefits merit its establishment of a regulatory asset in Account 182.3, Other Regulatory Assets, for the amount of any loss on the sale which El Paso would be required to support in its next rate case (due to be filed in June 2008).

84. We clarify that El Paso may seek a decision on the recovery of any loss on the sale of an undivided interest in the East Valley Lateral, along with the cost of the East Valley Lateral, in its next rate filing, based on a showing of benefits derived from the acquisition and sale of the undivided interest in the facility. Further, under the Commission's USofA, a regulatory asset can be recognized when amounts otherwise chargeable to expense in the current period are to be recovered in rates in a future period. To qualify as a regulatory asset, there must be a showing that both (1) the costs at issue are unrecoverable in existing rates and (2) it is probable that such costs will be determined to be recoverable in future rates.¹¹² El Paso should assess all available evidence bearing on the likelihood of rate recovery of these costs in periods other than the period that would traditionally be charged to expense. If, based on such assessment, El Paso determines that it is probable that these costs will be recovered in rates in future periods, it may record a regulatory asset for such amounts.

The Commission orders:

(A) In Docket No. CP06-459-000, Buckeye Interests' motion for stay is denied, for the reasons discussed herein.

(B) In Docket No. CP06-459-000, Mainspring's and Buckeye Interests' requests for rehearing are denied, for the reasons discussed herein.

(C) In Docket No. CP07-9-000, El Paso's request for rehearing is denied, for the reasons discussed herein.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹² See *PJM Interconnection, L.L.C. and Virginia Electric and Power Co.*, 109 FERC ¶ 61,012 (2004).