

119 FERC ¶ 61,069  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC	Docket Nos. CP06-354-000 CP06-354-001
TransColorado Gas Transmission Company	Docket No. CP06-401-000
Questar Overthrust Pipeline Company	Docket No. CP06-423-000

ORDER ISSUING CERTIFICATES, APPROVING ABANDONMENT, AND  
DENYING REHEARING

(Issued April 19, 2007)

1. On September 21, 2006, in Docket No. CP06-354-000, the Commission issued a preliminary determination addressing the non-environmental issues raised by the application filed by Rockies Express Pipeline LLC (Rockies Express)<sup>1</sup> under section 7(c) of the Natural Gas Act (NGA) requesting certificate authorization to construct and operate an expansion project with a capacity of 1,500,000 Dth per day (Dth/d), referred to as REX-West, which is designed to transport Rocky Mountain supplies to major markets in the United States (U.S.).<sup>2</sup> Final authorization for the construction of REX-West was reserved pending the completion of the Commission's environmental review. On October 23, 2006, Yates Petroleum Corporation (Yates) filed a request for rehearing of the September 21 Order.

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<sup>1</sup> Rockies Express was formerly known as Entrega Gas Pipeline LLC (Entrega). Rockies Express and Entrega merged into a single entity on April 11, 2006. Pursuant to the merger agreement, Entrega continues to exist after the merger as the surviving entity, under the name "Rockies Express Pipeline LLC."

<sup>2</sup> *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 (2006) (September 21 Order or *Rockies Express*).

2. The Commission has completed its analysis of Rockies Express' REX-West Project. As discussed below, we will grant the requested authorizations, subject to certain conditions. We also will deny Yates' request for rehearing of the September 21 Order.

3. This order will also address two related applications requesting authorizations to construct facilities that will interconnect with REX-West. On June 23, 2006, in Docket No. CP06-401-000, TransColorado Gas Transmission Company (TransColorado) filed an application under NGA section 7(c) to construct and operate certain facilities including 15,390 horsepower (hp) of new compression designed to permit TransColorado to deliver an additional 250,000 Dth/d of natural gas from the Blanco Hub area in San Juan County, New Mexico through the TransColorado pipeline system to Rockies Express at an existing point of interconnection located at the Meeker Hub in Rio Blanco County, Colorado (Blanco-Meeker Expansion).

4. On July 19, 2006, in Docket No. CP06-423-000, Questar Overthrust Pipeline Company (Overthrust) filed an application under NGA section 7(c) to construct and operate two compressor stations and approximately 77.2 miles of pipeline that will extend from the eastern terminus of Overthrust's transmission system to an interconnect with Rockies Express at Wamsutter in Sweetwater County, Wyoming (Wamsutter Expansion Project). The Wamsutter Expansion Project is designed to provide an additional 750,000 Dth/d of capacity to an existing interconnection with Wyoming Interstate Company, Ltd. (WIC) and 625,000 Dth/d of capacity to a proposed delivery point with Rockies Express at Wamsutter.

5. Together with REX-West, these projects will consist of approximately 796 miles of new pipeline, 237,320 hp of compression, meter stations, and other appurtenant facilities in Colorado, Wyoming, Nebraska, Kansas, Missouri, and New Mexico. These facilities are designed to transport increasing supplies of natural gas from the Rocky Mountain region to markets in the midwestern U.S.

6. As discussed below, we also find that TransColorado's and Overthrust's projects are in the public convenience and necessity and, therefore, grant the requested authorizations, subject to conditions.

## **I. Background and Proposals**

### **A. Rockies Express' Proposed REX-West Project**

7. On May 31, 2006, Rockies Express filed an application pursuant to section 7(c) of the NGA requesting certificate authorization to construct and operate approximately 713 miles of 42-inch-diameter mainline pipeline, with appurtenances, commencing at the

existing Cheyenne Hub and extending eastward to an interconnection with Panhandle Eastern Pipeline Company in Audrain County, Missouri. Rockies Express also proposes to construct four new mainline compressor stations consisting of: (1) 35,000 hp at the Cheyenne Compressor Station located in Weld County, Colorado; (2) 35,000 hp at the Julesburg Compressor Station located in Sedgwick County, Colorado; (3) 41,000 hp at the Steele City Compressor Station located in Gage County, Nebraska; and (4) 35,000 hp at the Turney Compressor Station located in Clinton County, Missouri. Rockies Express proposes to recover the costs of these facilities by establishing a new zoned rate (Zone 2).

8. In addition, Rockies Express proposes to add certain facilities to the Rockies Express Certificated Facilities<sup>3</sup> including: (a) one additional 10,310 hp mainline compressor unit at the Wamsutter Compressor Station in Sweetwater County, Wyoming; (b) an approximately 5-mile-long, 24-inch-diameter supply lateral near Echo Springs, in Carbon and Sweetwater Counties, Wyoming; and (c) a new 7,100 hp compressor station in Sweetwater County necessary to permit deliveries from the Echo Springs supply lateral to enter REX-West. Rockies Express proposes to use its existing rates for the Rockies Express Certificated Facilities as the Zone 1 rates for REX-West. However, Rockies Express requests a predetermination that it can roll in the costs of these facilities into its existing approved rates for service on the Rockies Express Certificated Facilities.

9. Rockies Express also proposes to construct and operate: (a) three compressor units totaling 13,020 hp at the certificated Meeker Compressor Station in Rio Blanco County, Colorado (Meeker Hub Facilities); and (b) one 500-hp compressor unit at the proposed Cheyenne Compressor Station in Weld County, Colorado (Cheyenne Hub Facilities). In addition, Rockies Express proposes to lease 625,000 Dth/d of capacity from Overthrust (Overthrust Lease Facilities). Rockies Express proposes to charge incremental rates to shippers utilizing these discrete facilities.

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<sup>3</sup> On August 9, 2005, the Commission issued an order authorizing Rockies Express to construct 327 miles of pipeline facilities in two phases (Rockies Express Certificated Facilities). For Phase I, Rockies Express was granted authorization to construct and operate approximately 136 miles of 36-inch-diameter pipeline extending northward from the Meeker Hub in Rio Blanco County, Colorado, to Wamsutter, in Sweetwater County, Wyoming (Segment 1), and then construct 191 miles of 42-inch-diameter pipeline eastward to the Cheyenne Hub in Weld County, Colorado (Segment 2). For Phase II, Rockies Express was authorized to construct three compressor stations referred to as the Meeker, Bighole, and Wamsutter Compressor Stations. *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 (2005), *order on reh'g*, 113 FERC ¶ 61,327 (2005). The Phase I facilities are currently operational. Phase II is still under construction.

10. Rockies Express conducted an open season for REX-West that offered benefits, in terms of transportation rates and other rate-related contractual benefits, to shippers based on the quantity of firm transportation commitment. As a result of the open season, Rockies Express entered into precedent agreements for almost all of the capacity of its proposed REX-West Project with twelve shippers. Rockies Express sought Commission approval of the conduct of its open season that led to the execution of the precedent agreements, the rates and contractual terms offered, and certain non-conforming provisions in the precedent agreements.

11. In the September 21 Order, we determined that contingent on a favorable result in our pending environmental review, the proposed REX-West Project will be required by the public convenience and necessity. We also approved Rockies Express' proposed recourse rates consisting of two rate zones (Zone 1 and Zone 2) and three additional incremental recourse rates to cover the use of certain specifically defined facilities, namely, the Overthrust Lease Facilities, the Meeker Hub Facilities, and the Cheyenne Hub Facilities. Rockies Express' request for a predetermination that the costs of the Wamsutter and Echo Springs facilities may be rolled into its Zone 1 rates was granted absent a significant change of circumstances. In addition, the September 21 Order found that Rockies Express' conduct of its open season was consistent with Commission policy, approved certain rate and contractual incentives granted to shippers based on their commitment to the project, and approved certain non-conforming provisions contained in the precedent agreements of two shippers. Finally, the September 21 Order rejected Rockies Express' proposal to include a new section 20.4(C) to its General Terms and Conditions (GT&C) of its tariff which provides that the pipeline will blend gas, to the extent operationally feasible, and affords a first-through-the-meter priority to gas not meeting the gas quality specifications of its tariff to shippers having firm service agreements in effect as of the date of commencement of service on REX-West (original shippers).

12. Yates filed for rehearing of our September 21 Order. Yates' rehearing request is limited to our rejection of Rockies Express' proposed changes to the gas quality specifications in section 20.4(C).

**B. TransColorado's Proposed Blanco-Meeker Expansion**

13. TransColorado is a natural gas company within the meaning of NGA section 2(b) and provides open access transportation service in New Mexico and Colorado. TransColorado's system extends from the Greasewood Receipt Point located in Rio Blanco County, Colorado, southward to a point of interconnection with various pipelines at the Blanco Hub located in San Juan County, New Mexico. The system interconnects with several interstate and intrastate pipelines and gatherers and producers in Colorado

and New Mexico, and delivers supplies of natural gas produced from major natural gas producing basins in or near the Rocky Mountain region.

14. On June 23, 2006, TransColorado filed an application pursuant to section 7(c) of the NGA requesting certificate authorization to construct and operate two new 2,370-hp compressor units at the proposed Blanco Compressor Station in San Juan County, New Mexico, two new 3,550-hp compressor units at the proposed Conn Creek Compressor Station located in Garfield County, Colorado, one new 3,550-hp compressor unit at the existing Greasewood Compressor Station in Rio Blanco County, Colorado, 1,632 feet of 24-inch diameter pipeline and one new receipt meter in San Juan County, New Mexico. In addition to the facilities described above for which NGA section 7(c) authorization is requested, TransColorado proposes to construct other appurtenant facilities including electric backup generators, filter separators, motor control centers, and minor piping, and to reconfigure three existing compressor sites by modifying header and piping facilities within existing fencelines under the authority of section 2.55(a) of the Commission's regulations.<sup>4</sup> When completed, the project will provide an additional 15,390 hp of compression on the Blanco-Meeker facilities, permitting shippers to transport an additional 250,000 Dth/d northward out of the San Juan and Rocky Mountain producing regions.

15. TransColorado states it held an open season for the Blanco-Meeker Expansion from February 27 through March 17, 2006. As a result of the open season, TransColorado states it entered into a precedent agreement with ConocoPhillips Company (ConocoPhillips) for the entire amount of the incremental capacity. The precedent agreement provides for a 10-year term at a negotiated rate.<sup>5</sup>

16. TransColorado estimates that the total cost for the construction of the Blanco-Meeker Expansion will be \$58,182,663. TransColorado proposes to charge its existing recourse rates as established in its settlement in Docket No. RP99-106<sup>6</sup> for firm and

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<sup>4</sup> 18 C.F.R. § 2.55(a) (2006). Section 2.55(a) of the Commission's regulations exempts certain facilities from the requirements of section 7(c) of the NGA because their only purpose is to achieve more efficient or more economical operation of authorized or proposed transmission facilities.

<sup>5</sup> Exhibit I contains a copy of the precedent agreement with ConocoPhillips. TransColorado requests confidential treatment of the precedent agreement pursuant to section 388.112 of the Commission's Rules of Practice and Procedures.

<sup>6</sup> See *TransColorado Gas Transmission Co.*, 99 FERC ¶ 61,078 (2002) (approving uncontested settlement).

interruptible transportation services on the proposed expansion. TransColorado also seeks a presumption that it can roll in the overall costs of the expansion facilities and associated fuel costs. In addition, TransColorado proposes to modify its tariff to include the contractual rollover rights to long-haul shippers on the expansion that it offered in its open season. TransColorado proposes that its existing tariff provisions apply to service on the proposed expansion facilities in all other respects.

**C. Overthrust's Proposed Wamsutter Expansion**

17. Overthrust is a natural gas company within the meaning of NGA section 2(b) and provides open access transportation service in Wyoming. Overthrust's current pipeline system extends approximately 88 miles from the Whitney Canyon production area in Uinta County, Wyoming to an interconnect with WIC at the Kanda-Nightingale-Coleman Compressor Complex (Kanda Complex), in Kanda, Wyoming.

18. Overthrust states that the purpose of the Wamsutter Expansion is to extend its existing pipeline infrastructure to transport Rocky Mountain gas supplies to downstream markets. The proposed facilities will provide an additional 750,000 Dth/d of capacity to an existing interconnection with WIC and 625,000 Dth/d of capacity to a proposed delivery point with Rockies Express at Wamsutter, Sweetwater County, Wyoming.

19. Overthrust seeks approval here to construct, own, and operate the following facilities:

- approximately 77.2 miles of 36-inch-diameter pipeline extending from the eastern terminus of the Overthrust transmission system located at Questar Pipeline Company's (Questar) Kanda Complex in Sweetwater County, Wyoming, to an interconnect with Rockies Express near Wamsutter in Sweetwater County;
- approximately 700 feet of 20-inch-diameter Tie Line in Lincoln County, Wyoming to improve operational flexibility and increase the capacity of Overthrust's transmission system;
- two new compressor stations with a total of 45,000 hp. These include two 15,000-hp compressor units at the Roberson Compressor Station in Lincoln County, Wyoming and a 15,000-hp compressor unit at the Rock Springs Compressor Station in Sweetwater County, Wyoming;

- one new receipt point at Blacks Fork, Wyoming, adjacent to the Blacks Fork Processing Plant, to bring additional quantities of processed gas into Overthrust's system;<sup>7</sup> and
- one new delivery point near Wamsutter, Wyoming, to deliver natural gas to Rockies Express.<sup>8</sup>

20. Overthrust held an open season for the Wamsutter Expansion from October 25 through November 17, 2005. As a result of the open season, Overthrust states that it entered into binding agreements for 750,000 Dth/d of capacity. Specifically, Overthrust entered into a binding transportation precedent agreement with WIC for a total of 125,000 Dth/d of capacity with a 12-year term. The binding precedent agreement provides for firm transportation service from the proposed receipt points near Opal to an existing Overthrust interconnect with Kanda at a discounted rate. Overthrust also entered into a binding Natural Gas Transportation Capacity Lease Agreement with Rockies Express for a term of twenty years, that provides that Rockies Express will acquire from Overthrust firm transportation capacity of 625,000 Dth/d with the right under certain conditions to increase the leased firm transportation capacity up to 1,500,000 Dth/d, from the Opal Hub to the Wamsutter Hub (lease agreement).<sup>9</sup> Overthrust seeks Commission approval to lease the capacity to Rockies Express.

21. The lease agreement provides that Rockies Express will make a monthly lease payment of \$2,422,100. Use of the leased capacity shall be on a firm basis of equal priority with Rate Schedule FT shippers on Overthrust's system. Rockies Express'

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<sup>7</sup> Overthrust had originally proposed to construct two additional receipt points near Opal, Wyoming. In a supplement filed on October, 30, 2006, Overthrust states that it will construct these receipt points under its blanket construction certificate and no longer seeks certificate authority here.

<sup>8</sup> In addition to the facilities described above for which NGA section 7(c) authorization is requested, Overthrust proposes to construct other appurtenant facilities including relief, block, and control valves, various metering, cathodic protection, gas coolers, buildings, electrical equipment, yard piping and pipeline markers under the authority of section 2.55(a) of the Commission's regulations.

<sup>9</sup> A copy of the lease agreement is contained in Exhibit I to the application. If service is requested above the 625,000 Dth/d level, Overthrust states it would submit a separate application for the additional facilities needed to provide the service.

shippers' use of the leased capacity will be subject to the terms of Rockies Express' FERC gas tariff.

22. Overthrust claims that approval of the lease agreement is consistent with Commission policy. Specifically, Overthrust maintains that the lease agreement avoids Rockies Express constructing facilities that would duplicate, in part, Overthrust's facilities that would be necessary for Rockies Express to provide equivalent transportation on its own pipeline system, thereby reducing the environmental impact of constructing new facilities. Overthrust also states that the lease payment is less than what Rockies Express would have to pay to build the required facilities.<sup>10</sup> Finally, Overthrust maintains that its existing customers will not be adversely affected, as the incremental capacity that Overthrust proposes is sufficient to perform under the lease agreement.

23. Overthrust estimates that the total cost for the construction of the Wamsutter Expansion will be \$202,325,045. Overthrust proposes incremental firm and interruptible recourse rates under its existing Rate Schedules FT and IT for transportation service on the Wamsutter Expansion. The company also proposes to implement in section 35 of its GT&C a mechanism to recover and track gas use and lost and unaccounted for gas from those customers utilizing the new compression facilities.

## **II. Notice, Interventions, Comments and Protests**

24. In Docket No. CP06-354-000, notice of Rockies Express' application was published in the *Federal Register* on June 21, 2006 (71 Fed. Reg. 35,641). Motions to intervene were filed as described in the September 21 Order.<sup>11</sup>

25. In Docket No. CP06-401-000, notice of TransColorado's application was published in the *Federal Register* on July 27, 2006 (71 Fed. Reg. 44,023). A number of

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<sup>10</sup> Overthrust refers to Rockies Express' application in CP06-354-000 that shows that the proposed lease payment that equates to a charge of \$3.8751 per Dth of MDQ/month, to be applicable to those customers who utilize the Overthrust facilities, is less than the estimated firm transportation recourse reservation rate of \$6.8803 per Dth of MDQ/month that would be required if Rockies Express built a greenfield project that duplicated Overthrust's facilities.

<sup>11</sup> *Rockies Express*, 116 FERC at P 29-30.



timely, unopposed interventions were filed.<sup>12</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>13</sup>

26. In Docket No. CP06-423-000, notice of Overthrust's application was published in the *Federal Register* on July 27, 2006 (71 Fed. Reg. 44,023). A number of timely, unopposed interventions were filed.<sup>14</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>15</sup> Rockies Express filed comments in support of Overthrust's application and urges the Commission to act swiftly to approve the Wamsutter Expansion.

27. The Missouri Department of Conservation filed a late motion to intervene in all three dockets. The Commission finds that granting the late-filed motion to intervene at this early date will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motion to intervene in each proceeding.<sup>16</sup>

### **III. Discussion**

28. Because the applications filed by Rockies Express, TransColorado, and Overthrust propose facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

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<sup>12</sup> Motions to intervene were filed by Chevron Natural Gas, a division of Chevron USA, Inc, jointly by El Paso Natural Gas Company, Colorado Interstate Gas Company and Wyoming Interstate Company, BP America Production Company and BP Energy Company, and Western Gas Resources, Inc.

<sup>13</sup> *See* 18 C.F.R. § 385.214(a)(3) (2006).

<sup>14</sup> Motions to intervene were filed by the following parties: Chevron Natural Gas, a division of Chevron USA, Inc, jointly by Colorado Interstate Gas Company and Wyoming Interstate Company, Ltd, Rockies Express, and BP America Production Company and BP Energy Company.

<sup>15</sup> *See* 18 C.F.R. § 385.214(a)(3) (2006).

<sup>16</sup> *See* 18 C.F.R. § 385.214(d) (2006).

### **A. Application of the Certificate Policy Statement**

29. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating major new construction.<sup>17</sup> The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

30. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

#### **1. Rockies Express' Proposed REX-West Project**

31. In our September 21 Order, we found that the REX-West Project could proceed without subsidies and would not adversely affect other pipelines and their customers. Therefore consistent with our Policy Statement and NGA section 7, we found, pending completion of the environmental review, approval of REX-West to be required by the public convenience and necessity. Upon completion of our environmental review as discussed below, we affirm our determinations in the September 21 Order that approval of the REX-West Project is required by the public convenience and necessity.

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<sup>17</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC & 61,277 (1999), *order on clarification*, 90 FERC & 61,128 (2000); *order on clarification*, 92 FERC & 61,094 (2000) (Policy Statement).

## **2. TransColorado's Proposed Blanco-Meeker Expansion**

32. TransColorado's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, the incremental rates derived for this project are lower than TransColorado's existing Part 284 rates, resulting in a rate reduction to existing customers when the project costs and revenues are rolled in to TransColorado's existing rates.

33. The project will not adversely affect TransColorado's existing customers, or other pipelines and their customers. The proposed facilities are designed to increase the capacity of the TransColorado system without degradation of service to TransColorado's existing firm customers. In fact, all of TransColorado's existing shippers will benefit from increased operational reliability and flexibility. Further, the Blanco-Meeker Expansion is designed as a supply access project that will provide transportation capacity to enable Rocky Mountain supplies to reach U.S. markets. Thus, there is no evidence that service on other pipelines will be displaced or bypassed, and no pipeline companies have objected to the project. We conclude that TransColorado's proposal will not have adverse impacts on existing pipelines or their captive customers.

34. TransColorado states that the Blanco-Meeker Expansion will be constructed entirely within, or immediately adjacent to, TransColorado's existing rights-of-way in New Mexico and Colorado. Additionally, TransColorado maintains that it has sought to minimize the number of new easements that will be required for the project and has sought to use, to the maximum extent possible, previously disturbed land. For these reasons, we find that any adverse impacts on landowners and communities will be minimal.

35. TransColorado has entered into a long-term precedent agreement for the additional design capacity of the Blanco-Meeker Expansion. There is a need for increased pipeline capacity to access increasing gas supplies in the Rocky Mountain area and the Blanco-Meeker Expansion is designed to meet that need. Based on the benefits that the Blanco-Meeker Expansion will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find that approval of the Blanco-Meeker Expansion is required by the public convenience and necessity.

## **3. Overthrust's Proposed Wamsutter Expansion**

36. Overthrust's proposal appears to satisfy the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Overthrust proposes to establish an incremental recourse rate as well as a capacity lease charge to Rockies Express to recover the costs of the Wamsutter

Expansion. Thus, none of the costs of the proposed project are included in the rates of Overthrust's existing customers. We have previously determined that where a pipeline proposes to charge incremental rates for new construction, this satisfies the threshold requirement that the project will not be subsidized by existing customers.<sup>18</sup> However, as discussed more fully below, we require Overthrust to recalculate its proposed recourse rate consistent with Commission policy.

37. Nevertheless, the project will not adversely affect Overthrust's existing customers, or other pipelines and their customers. The proposed facilities are designed to extend the Overthrust system without degradation of service to Overthrust's existing firm customers. Further, the Wamsutter Expansion will provide transportation capacity to enable growing volumes of Rocky Mountain gas production to reach Midwest markets. None of the existing pipelines adjacent to Overthrust's proposed route have the capacity required to transport the volumes of gas contracted for on the Wamsutter Expansion. Thus, there is no evidence that service on other pipelines will be displaced or bypassed and no pipeline companies have objected to the project. We conclude that Overthrust's proposal will not have adverse impacts on existing pipelines or their captive customers.

38. Overthrust states that the Wamsutter Expansion is of a limited scope and the proposed 77.2 miles of pipeline will parallel existing rights-of-way for its entire length. In addition, Overthrust maintains that the lease agreement eliminates the need for Rockies Express to construct a greenfield pipeline, thereby avoiding additional adverse environmental effects. For these reasons, we find that the effect of Overthrust's proposed project on landowners and communities will be minimized.

39. Overthrust has entered into long-term precedent agreements for 100 percent of the design capacity of the project. In addition, the project will benefit consumers across the nation by providing an additional transportation outlet for Rocky Mountain natural gas to reach markets. Based on the benefits that the Wamsutter Expansion will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find that approval of the proposed project is required by the public convenience and necessity.

#### **B. Capacity Lease with Rockies Express**

40. As discussed above, Overthrust seeks authority to lease to Rockies Express 625,000 Dth/d of firm transportation capacity on both its existing facilities as well as the

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<sup>18</sup> See, e.g., *Eastern Shore Natural Gas Co.*, 95 FERC ¶ 61,344 (2001); *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,380 (2001).

proposed Wamsutter Expansion facilities.<sup>19</sup> For the following reasons, we find that Overthrust's request to abandon by lease to Rockies Express, 625,000 Dth/d of firm capacity on Overthrust's system will be required by the public convenience and will be granted subject to condition.

41. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.<sup>20</sup> To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity, and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.<sup>21</sup>

42. We find that approval of the lease agreement is consistent with the cited Commission policy with one exception. As discussed more fully below, we are requiring Overthrust to recalculate its proposed maximum initial FT rate for the expansion facilities because, in calculating that rate, Overthrust did not credit the lease revenues to its cost of service as required by Commission policy. It is likely that the recalculated rate will be less than Rockies Express' lease payments and thus, Rockies Express' lease payments will not meet the criteria of being less than, or equal to, the lessor's firm transportation rate. Nevertheless, we will approve the lease agreement because the benefits of the lease are substantial and, in this case, there is no detriment to Overthrust's or Rockies Express' customers. We have found that Overthrust's customers will not subsidize the cost of the

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<sup>19</sup> The September 21 Order made a preliminary determination to grant Rockies Express' request to lease capacity from Overthrust. The level of the incremental rate for the lease of capacity with Overthrust was made subject to the outcome of the Overthrust proceeding in Docket No. CP06-423-000.

<sup>20</sup> *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

<sup>21</sup> See *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,160, at 61,755-59 (1997); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at 61,888 (1995); and *Mobile Bay Pipeline Projects*, 55 FERC ¶ 61,358, at 62,078 (1991).

expansion facilities. Further, those customers will not be otherwise adversely affected since new incremental capacity will be added by Overthrust sufficient to avoid any impact on existing services. Of particular import when a pipeline proposes to lease facilities that will be constructed specifically for the lease, Rockies Express' proposed incremental recourse reservation rate of \$3.8751 per Dth of MDQ/month, to be applicable to its customers who utilize the Overthrust facilities, is significantly less than the \$6.8803 per Dth of MDQ/month estimated firm transportation recourse reservation rate that would be required if Rockies Express built a greenfield project that duplicated Overthrust's facilities. Finally, the lease agreement maximizes the efficient use of existing facilities and avoids duplication of existing pipeline facilities.

43. However, we will require the force majeure provision (Article V) of the lease agreement to be modified consistent with Commission precedent. Article V provides that the parties will be relieved of their performance obligations under the agreement in the event of a force majeure situation under certain circumstances. Section 5.2 defines force majeure as acts and events not within the control of the party claiming suspension including "routine maintenance." The Commission has consistently held that routine or scheduled maintenance is a not a force majeure event outside the control of the pipeline.<sup>22</sup> Rather, it is a non-force majeure event because a pipeline is responsible for operating its system so that it can meet its contractual obligations. Accordingly, we direct the parties to the lease agreement to eliminate routine maintenance as a force majeure event in section 5.2 of the lease agreement.

44. Article IX of the lease agreement adopts certain provisions of the Rockies Express FERC Gas tariff by reference. Specifically, section 9.1 of the lease agreement provides that the parties' rights and obligations with respect to possession of, title to and responsibility for natural gas shall be the same as set forth in section 22 of the draft Rockies Express FERC Gas Tariff as published on the Kinder Morgan, Inc. web site as of the date of the lease agreement (February 15, 2006). Section 9.2 states that the adoption by reference agreed to in Article IX shall extend to the effective Rockies Express tariff, as in effect from time to time, unless either party objects to subsequent changes. If either party objects to a subsequent change, the parties shall negotiate specific language in the agreement, and if the parties are not able to agree to the appropriate language, the issue shall be determined in accordance with Article X, Dispute Resolution. Article X provides for non-binding dispute resolution procedures. In the event the parties to the

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<sup>22</sup> *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159, at P 11 (2004), *order denying reh'g*, 111 FERC ¶ 61,101, at P 17-19 (2005), *aff'd*, *North Baja Pipeline, LLC v. FERC*, No. 05-1214 (D.C. Cir. March 9, 2007).

lease agreement agree to provisions with respect to possession of, title to, and responsibility for natural gas other than those contained in section 22 of Rockies Express approved tariff, we remind them that they must file a revised lease for Commission approval since the lease agreement is a jurisdictional contract.

**C. Rates and Tariff Issues**

**1. Rockies Express' Proposed REX-West Project**

45. In the September 21 Order, we approved Rockies Express' proposal to establish recourse rates consisting of two rate zones (Zone 1 and Zone 2) and three incremental rates to recover the costs of the Overthrust Lease Facilities, the Meeker Hub Facilities, and the Cheyenne Hub Facilities. We also approved Rockies Express proposed pro forma tariff subject to certain modifications. As pertinent here, we rejected Rockies Express' proposal to add a new section 20.4(C) to the gas quality specifications of its tariff that affords a first-through-the-meter priority to original shippers for gas not meeting the gas quality specifications of the tariff. Yates filed for rehearing of this determination.

**a. Gas Quality Specifications**

**i. The September 21 Order**

46. The September 21 Order rejected Rockies Express' proposal to include a new section 20.4(C) to the proposed GT&C which provides that the pipeline will blend gas, to the extent operationally feasible, to accommodate the gas of those original shippers who have firm service agreements in effect as of the date of the commencement of service on REX-West. The new provision provides that, "[t]ransporter shall address the request of such original Shippers, on a first-through-the-meter basis, for purposes of determining the acceptability of any Gas which does not otherwise meet, on a stand-alone or on a blended basis, the gas quality provisions of this tariff." The September 21 Order rejected new section 20.4(C), finding that the proposed provision is unjustified and unduly discriminatory because it results in original shippers receiving a higher quality of firm service than other firm shippers based solely on the date a shipper contracts for service.

**ii. Yates' Request for Rehearing**

47. Yates claims that the Commission erred in finding that the proposed gas quality provision is unduly discriminatory. Yates claims that the proposal is justified from an operational standpoint and is consistent with the Commission's Policy Statement on

Natural Gas Quality and Interchangeability.<sup>23</sup> Yates asserts that section 20.4(C) is designed to address operational issues that may arise due to the interconnection of the REX-West Project with upstream pipelines with different gas quality standards. Yates explains that it has contracted for 43,000 Dth/d of REX-West capacity, with 28,000 Dth/d of this capacity to be received from WIC at the Cheyenne Hub. According to Yates, its ability to utilize this 28,000 Dth/d of capacity is potentially frustrated by the fact that the WIC tariff establishes a three percent by volume limit on carbon dioxide (CO<sub>2</sub>)<sup>24</sup> while Rockies Express has adopted a more stringent two percent by volume limit.<sup>25</sup>

48. Yates asserts that the proposed provision is consistent with the Commission's Policy Statement on Gas Quality that encourages pipelines to pursue blending solutions in these types of situations and affords pipelines significant discretion when deciding how and when to offer blending. In this regard, Yates claims that the proposed provision reflects Rockies Express' determination that it will likely be able to offer blending to accommodate deliveries of nonconforming gas from original shippers based on such factors as the design of the project, the location and configuration of planned interconnections with other pipelines, and the existing capacity commitments of the original shippers. By contrast, Yates asserts that Rockies Express is unable to evaluate whether and to what extent it may be able to accommodate nonconforming deliveries from shippers that may request service in the future. Thus, Yates maintains that it is appropriate for Rockies Express to limit the blending commitments it makes at this time to original shippers without prejudicing the right of future shippers to request similar blending based on the operating conditions that exist at the time service is requested.

49. Yates also maintains that section 20.4(C) does not guarantee that original shippers will receive a higher quality of firm service than other firm shippers as it asserts was suggested in the September 21 Order. Yates states that shippers requesting service in the future may or may not require blending in order to access the Rockies Express system, and the ability of Rockies Express to provide any such blending may or may not exceed the blending that is available to original shippers. For these reasons, Yates claims that Section 20.4(C) does not assure that firm service provided to future shippers will be of a lesser quality than the service provided to original shippers.

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<sup>23</sup> 115 FERC ¶ 61,325 (2006) (Policy Statement on Gas Quality).

<sup>24</sup> See WIC FERC Gas Tariff, section 10.3 of GT&C.

<sup>25</sup> See Rockies Express Pro Forma FERC Gas Tariff, section 20.2 of GT&C.



50. Finally, Yates claims that establishing a blending priority based solely on the date a shipper contracts for service is consistent with Commission precedent. Specifically, Yates states that the Commission: (1) has permitted both pipelines and electric utilities to award scarce capacity on a first-come, first-served basis according to the date service is requested;<sup>26</sup> (2) has found that it is not unduly discriminatory for pipelines to use the date a shipper requests service to break ties when allocating interruptible capacity;<sup>27</sup> and (3) has permitted pipelines to provide incentives to shippers whose capacity commitments are instrumental in the development of new projects.<sup>28</sup>

### iii. Commission Determination

51. We deny Yates' request for rehearing. We reject Yates' contention that proposed section 20.4(C) is not unduly discriminatory because it is justified from an operational standpoint. In the Policy Statement on Gas Quality, the Commission stated that it continued to believe that it is appropriate to allow pipelines to exercise their discretion to waive strict gas quality limits when operating conditions allow and we encouraged pipelines to allow blending and other strategies to the extent they could be implemented on a non-discriminatory basis.<sup>29</sup> For example, the Commission stated "a pipeline may be able to accept rich gas containing more of the heavier hydrocarbons than its tariff would

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<sup>26</sup> *Citing Pan-Alberta Gas (U.S.) Inc. and Mirant Americas Energy Marketing, L.P. v. Northern Border Pipeline Co.*, 101 FERC ¶ 61,249, at P 22 (2002); *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251, at P 78 (2004).

<sup>27</sup> *Citing Pacific Gas Transmission Company*, 77 FERC ¶ 61,163, at 61,622 (1996); *Trailblazer Pipeline Company*, 108 FERC ¶ 61,049, at P 40-46 (2004) (upholding the use of a similar tiebreaker for the allocation of released capacity).

<sup>28</sup> *Citing Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231 (2006); *Rockies Express* at PP 22-25, 72 (accepting various additional incentives including most favored nations status and right-of-first-refusal provisions). Yates claims that while its was unable to take advantage of these incentives due to the level of its production activity in the basins that can feasibly be served by REX-West, the ability of Yates to become an original shipper and to make a 10-year capacity commitment was directly related to the willingness and ability of Rockies Express to address the differences between its gas quality standards and those of WIC.

<sup>29</sup> Policy Statement on Gas Quality at P 39-41.

otherwise permit by blending that gas with leaner gas that contains very little of the heavier hydrocarbons. However, there may be more such lean gas available for blending on some parts of the pipeline's system than on other parts. Furthermore, a pipeline's ability to blend supplies of varying quality will depend on the supplies' proximity to market."<sup>30</sup> Thus, any disparate treatment among shippers regarding gas quality specifications must be justified by legitimate operating conditions on the pipeline performing the transportation service. Here, Yates relies upon the date a shipper contracts for service to support the proposed disparate treatment between original and future shippers. This is not a legitimate operating condition on the Rockies Express system that justifies accepting original shippers' gas that does not meet the gas quality specifications of Rockies Express' tariff before it accepts such gas from future shippers.

52. We also find that Yates' assertion that Rockies Express determined that it could accept all non-conforming gas from original shippers but cannot do so for future shippers does not justify providing the proposed preference to original shippers. First, there is no support in the record for Yates' assertion. Second, the proposed provision at issue does not guarantee that original shippers' gas that does not meet the stated gas quality specifications will be scheduled, as Yates suggests. Rather, section 20.4(C) only provides that the pipeline will blend gas, to the extent operational feasible, to accommodate the gas of original shippers. Assuming *arguendo* that Yates' assertion is correct, this fact alone does not constitute an operational reason supporting Rockies Express' acceptance of gas supplies from original shippers before it accepts gas from future shippers. It merely provides a preference to original shippers' gas over future shippers' gas that is at odds with the requirement that pipelines provide firm service without undue discrimination or preference in the quality of service provided.

53. We recognize that Yates' ability to utilize its capacity on REX-West is potentially frustrated by the fact that the WIC tariff establishes a three percent by volume limit on CO<sub>2</sub> while Rockies Express has adopted a two percent by volume limit. However, any future firm shipper on REX-West that would receive gas at the WIC-REX-West interconnection is similarly situated to Yates and any other original firm shipper. The Commission requires pipelines to provide jurisdictional transportation service to similarly situated shippers in a not unduly discriminatory manner. As we found in the September 21 Order, the proposed provision at issue here is unduly discriminatory because it would grant some firm shippers service superior to, and potentially at the expense of, other firm shippers.

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<sup>30</sup> *Id.* at 39.

54. We also reject Yates' argument that the proposed provision is not unduly discriminatory because there is no guarantee that late comers do not get the same service by having their gas that does not meet the gas quality specifications of the tariff accepted. Under the NGA and Commission regulations,<sup>31</sup> we have consistently rejected pipeline proposals that present a significant potential for undue discrimination among similarly situated shippers.<sup>32</sup> In the September 21 Order we found that "the proposed tariff provision would grant some firm shippers service superior to, and potentially at the expense of, other firm shippers." Thus, we found in the September 21 Order and affirm here that the proposal is unacceptable because it presents a significant potential for undue discrimination among firm shippers that is not supported by any operational conditions on the Rockies Express system.

55. Equally unavailing is Yates' assertion that the proposed provision is consistent with Commission precedent. While the Commission has found that a first-come, first-serve basis is appropriate for awarding firm capacity, once service commences all similarly situated firm shippers must receive the same quality of service. Section 284.7(a)(3) of our regulations states "[s]ervice on a firm basis means that the service is not subject to a prior claim by another customer or another class of service and receive[s] the same priority as any other class of firm service."<sup>33</sup> Scheduling firm service based on the date a shipper contracts for service is at odds with this policy. Moreover, while the Commission has approved the use of the date a shipper requests service to break ties when allocating interruptible service, it has not done so for firm service. We disagree with Yates' suggestion that the blending protocol that Rockies Express would perform under section 20.4(C) for firm shippers is similar to interruptible service. The acceptance of firm shippers' gas under this provision would be performed under the shippers' firm service agreements, not under interruptible service agreements.

56. We also find that our approval of lower rates and other incentives including annual rollover rights and enhanced ROFR rights offered by Rockies Express to foundation and anchor shippers based on their commitment to the project is distinguishable from the proposal here. The Commission has permitted pipelines to negotiate rates that deviate from those that are set forth in the pipeline's generally applicable rate schedules, so long as the shipper continues to have the option of choosing recourse service from the

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<sup>31</sup> 15 U.S.C. § 717(c); 18 C.F.R. §§ 284.7(b), 284.9(b) (2006).

<sup>32</sup> See, e.g., *ANR Pipeline Co.*, 97 FERC ¶ 61,223 (2001); *CenterPoint Energy Gas Transmission Co.*, 104 FERC ¶ 61,281 (2003).

<sup>33</sup> 18 C.F.R. § 284.7(a)(3) (2006).

pipeline.<sup>34</sup> Moreover, the Commission does not require pipelines to allow shippers contractual rollover rights and ROFR rights beyond the requirements of section 284.221 of the regulations.<sup>35</sup> However, the Commission allows pipelines to offer such enhanced rights as long as they do so on a non-discriminatory basis. In *Rockies Express*, the pipeline entered into negotiated rate agreements with shippers and voluntarily offered to provide contractual rollover and ROFR rights to certain shippers based on a shipper's commitment to the project. The Commission found that the rate and contractual incentives were offered in a transparent open season, were clearly defined and that all potential shippers had an opportunity to become foundation or anchor shippers. Under these circumstances, the Commission determined that the pipeline had adequately supported offering these incentives to certain categories of shippers based on their commitment to the project. In contrast, the Commission generally does not permit pipelines to negotiate terms and conditions of service such as scheduling, imbalances, or operational obligations such as OFOs that result in certain customers receiving a different quality of service than that provided other customers.<sup>36</sup> This is the situation here. Section 20.4(C) provides that an original shipper's gas not meeting the gas quality specifications of the tariff would be scheduled before a future shipper's gas also not meeting the gas quality specifications. Providing a different quality of firm service to original shippers at the potential expense of future shippers is not justified in this situation. Thus, we find that that the proposed provision entails such a risk of undue discrimination that it cannot be permitted.<sup>37</sup>

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<sup>34</sup> The Commission also permits a most favored nations clause applicable only to a shipper's rate in a negotiated rate agreement since the clause would not provide the shipper with a different quality of service from other shippers on the system. *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,268, at P 17 (2002).

<sup>35</sup> These rights do not apply to negotiated rate contracts.

<sup>36</sup> Order No. 637, FERC Stats. & Regs., Regulation Preambles (July 1996-December 2000) ¶ 31,091, at 31,344 (2000).

<sup>37</sup> Yates' assertion that its ability to become an original shipper and to make a 10-year capacity commitment was directly related to the willingness and ability of Rockies Express to address the differences between its gas quality standards and those of WIC is not persuasive. Yates signed its binding precedent agreement at the completion of the open season that was held at the end of 2005. Rockies Express did not propose to include the new section 20.4(C) of the GT&C in its tariff until its August 9, 2006 Motion for Leave to Answer and Answer.

## 2. TransColorado's Proposed Blanco-Meeker Expansion

### a. Rates

57. TransColorado proposes to charge as its initial rates for transportation services on the Blanco-Meeker Expansion its currently effective Part 284 transportation rates and Phase II fuel gas reimbursement percentage. However, TransColorado seeks a presumption that it can roll in the overall costs of the expansion facilities in its system-wide rates and track the associated fuel costs in accordance with its Fuel Gas Reimbursement Percentage tracking mechanism applicable to Phase II shippers set forth in its tariff.<sup>38</sup>

58. TransColorado claims that rolled-in rate treatment of the cost of the new facilities is appropriate because the incremental rates are substantially lower than its existing Part 284 rates. Specifically, TransColorado states that the 100 percent load factor rate for the expansion facilities is \$0.1120 Dth/d<sup>39</sup> while its current Part 284 rate for existing shippers is \$0.3064 Dth/d, as stated as a 100 percent load factor rate. Thus, TransColorado claims a determination approving rolled-in rate treatment is appropriate since the overall cost-of-service on a per unit basis will be reduced when the new facilities' costs are rolled-in.

59. TransColorado also claims that rolled-in rate treatment of fuel costs is appropriate because it anticipates the proposed roll in will lower the amount of fuel used on its system relative to the system's total throughput and will result in immediate benefits to the existing customers due to the tracking mechanism in its tariff. TransColorado explains that the proposed compression to be constructed in this application will enable it to meet its firm service obligations to transport gas northward on its system from Blanco to Meeker. However, TransColorado states that it anticipates that this compression will not be operated on a full-time basis because current flows on TransColorado are predominately north to south and, depending on the level of southbound volumes, the delivery of north bound volumes are anticipated to be made by displacement. Given

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<sup>38</sup> Pursuant to section 12.9 of the GT&C, Phase II transportation is subject to in kind reimbursement for gas consumed in transmission-system operations and for its proportionate share of lost and unaccounted-for gas. Phase I transportation (consisting of transportation using the 22.5 miles of pipeline at the southern end of TransColorado's system) is not charged for gas used in operations but only for its proportionate share of lost and unaccounted-for gas.

<sup>39</sup> See Exhibit N at 7.

these operational characteristics, TransColorado claims a roll in of the new shippers' volumes will reduce the overall system-wide Phase II fuel rate that is tracked by TransColorado. TransColorado also states that the new compression facilities will provide increased reliability and flexibility to all shippers on the pipeline's system, meeting the guidelines established in the Commission's Policy Statement.

60. We find that that TransColorado's proposed project can proceed without subsidies from its existing customers and expect it to provide public benefits without adverse impacts. TransColorado has demonstrated that its existing customers will have lower overall transportation and fuel rates if the cost of the proposed facilities and fuel costs are rolled into its system-wide rates, as proposed. Therefore, TransColorado's request for a presumption of rolled-in rate treatment for the costs of the Blanco-Meeker Expansion facilities and associated fuel use is granted unless there is a significant change in the relevant facts and circumstances.

61. As explained above, TransColorado proposes to enter into a negotiated rate agreement for firm transportation service on the Blanco-Meeker Expansion with ConocoPhillips. While the Commission does not approve negotiated rate agreements in certificate proceedings,<sup>40</sup> in order to comply with the Alternative Rate Policy Statement<sup>41</sup> and our decision in *NorAm Gas Transmission Company*,<sup>42</sup> we will direct TransColorado to file its negotiated rate contract or numbered tariff sheet not less than 30 and not more than 60 days prior to the commencement of service on the facilities stating: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; (6) any formula upon which the negotiated rate is designed; and (7) a statement affirming that the negotiated rate contract

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<sup>40</sup> See *East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331 (2002); *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,057, *order on reh'g*, 95 FERC ¶ 61,367 (2001); and *Independence Pipeline Co.*, 91 FERC ¶ 61,102 and 92 FERC ¶ 61,022, *order on reh'g and clarification*, 92 FERC ¶ 61,268 (2000).

<sup>41</sup> *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, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petitions denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, No. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July, 20, 1998).

<sup>42</sup> *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

does not deviate in any material respect from the form of service agreement in TransColorado's FERC Gas Tariffs. TransColorado must also disclose all consideration received that is associated with the agreement. Finally, TransColorado must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

**b. Contractual Rollover Rights**

62. TransColorado proposes to modify section 7 of its GT&C to institute rollover rights for all full-length, northbound shippers utilizing the Blanco-Meeker Expansion who sign a firm service agreement with a minimum term of ten years. The proposed contractual rollover rights are renewable for one-year terms at the same rate and quantity (or any portion of such quantity) as set forth in the effective service agreement. TransColorado states that the availability of these contractual rollover rights was announced in the open season and was available on a non-discriminatory basis to all potential shippers who participated in the open season. TransColorado claims that this rollover provision was an essential element that led to a contractual agreement with the shipper that was awarded capacity in the project.

63. The Commission permits a pipeline to offer contractual rollover right as long as these rights are offered on a non-discriminatory basis.<sup>43</sup> Here, TransColorado offered contractual rollover rights to all full-length, northbound shippers utilizing the Blanco-Meeker Expansion who sign a firm service agreement with a minimum term of ten years in a transparent open season and is incorporating these rights in its tariff. Under these circumstances, we find that the contractual rollover rights offered are not unduly discriminatory, and we approve the proposed revisions to section 7 of the tariff.

**3. Overthrust's Proposed Wamsutter Expansion**

64. Overthrust proposes an incremental recourse rate under its existing Rate Schedules FTS and ITS for the expansion facilities based on the cost-of-service for the Wamsutter Expansion. The proposed FTS maximum reservation rate of \$4.0869 per Dth is based on a projected annual cost-of-service of \$33,206,862. In developing the cost-of-service, Overthrust has also utilized a capital structure of 53.6 percent debt and 46.4 percent equity and proposes an 11.75 percent return on equity and a 7.15 percent cost of debt. Overthrust has used a depreciation rate of 3.7 percent consistent with the depreciation

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<sup>43</sup> See September 21 Order at P 72-73.

rate approved in its last settlement in Docket No. RP00-2-000.<sup>44</sup> The proposed ITS maximum rate of \$0.0712 per Dth is the 100 percent load factor equivalent of the firm incremental transportation rate.

65. In addition, Overthrust proposes to implement in section 35 of its GT&C a mechanism to recover and track gas use and lost and unaccounted for gas from those customers utilizing the new compression facilities it proposes to construct in this proceeding. Overthrust explains that this new provision is necessary because its system does not currently have compression.

66. The Commission has reviewed the cost-of-service and the associated proposed initial firm transportation recourse rates for the Wamsutter Expansion and finds that it has been miscalculated. Commission policy requires that a capacity lease be treated as an operating lease for accounting purposes and monthly receipts must be recorded in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities. These revenues are treated as a credit to the company's cost of service.<sup>45</sup> Consistent with this policy, Overthrust must recalculate its proposed initial FT rate and comply with this accounting treatment. Additionally, in the compliance filing Overthrust should explain the appropriateness of the allocation of costs to leased facilities and why the interconnection costs with its affiliate Rendezvous Gas Services should be included in the design of the incremental rate. To the extent the recalculated FT rate is less than Overthrust' existing FT system-wide rate, Overthrust should propose to adopt its existing FT rate for service on the expansion. In these circumstances, it would be appropriate for Questar to propose roll-in treatment of the expansion costs in its next general rate case.

67. Further, we find that the proposed initial interruptible rate that is designed on the incremental costs of the expansion project is not appropriate. Here, IT service will only be rendered on the expanded integrated system. Consistent with Commission precedent,<sup>46</sup> we will require Overthrust to utilize its existing system-wide IT rate. We also direct Overthrust to maintain records that separately identify the costs associated with the Wamsutter Expansion to comply with the requirements of section 154.309 of the Commission's regulations.

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<sup>44</sup> *Overthrust Pipeline Co.*, 92 FERC ¶ 61,027 (2000) (approving uncontested settlement).

<sup>45</sup> *See, e.g., Natural Gas Pipeline Company of America*, 118 FERC ¶ 61,211, at P 17 (2007).

<sup>46</sup> *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 326-38 (2006).



68. We agree with Overthrust that it is appropriate to establish a mechanism to recover and track fuel use on its system. However, as drafted the proposal appears to apply to all shippers not just the incremental shippers using the expansion capacity. Similarly, Overthrust proposes to change the inert substance provision in section 14.7 of its GT&C that would be applicable to all shippers on its system to reflect a limit of two percent on the amount of CO<sub>2</sub> that can be present in the natural gas received by Overthrust.<sup>47</sup> Under these circumstances, we find that Overthrust should seek to make these changes in a limited section 4 proceeding. This will ensure that Overthrust's existing shippers have adequate notice and an opportunity to file comments on the proposed changes. Accordingly, we reject Overthrust's proposals to implement a fuel tracker and to change the inert substance provision of its tariff without prejudice to it refiling the proposed changes in a section 4 proceeding.

#### **D. Environmental Analysis**

69. The facilities proposed by Rockies Express, TransColorado, and Overthrust are considered interconnected projects that are necessary components of a larger, combined natural gas transportation system. Therefore, the final environmental impact statement (EIS), issued on March 16, 2007, evaluates the impacts of all three projects together (collectively referred to as the "Rockies Western Phase Project"). The final EIS was mailed to approximately 3,400 agencies; elected officials; environmental and public interest groups; Native American tribes; landowners; local libraries and newspapers; and other interested stakeholders. The distribution list is provided as Appendix A of the final EIS. The U.S. Environmental Protection Agency (EPA) noticed issuance of the final EIS on March 23, 2007 (72 Fed. Reg. 13,786).

70. The U.S. Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) served as cooperating agencies for the preparation of the EIS under the National Environmental Policy Act (NEPA). Because the BLM must comply with the requirements of NEPA before granting rights-of-way access across federally managed lands, cooperating agency status allows it to adopt the EIS to meet its responsibilities. The BLM is considering the issuances of new Right-of-Way Grants and temporary use permits that will apply to BLM-managed lands crossed by all three projects. The BLM's decision will be documented in a Record of Decision it prepares.

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<sup>47</sup> The existing tariff provides that such gas shall not contain inert substances of more than three percent by volume. Overthrust states that this change is required to meet the downstream pipelines' gas quality specifications.

71. Based on information provided by Rockies Express, TransColorado, and Overthrust and further developed from data requests; field investigations; scoping; literature research; alternatives analysis; and contacts with federal, state, and local agencies and individual members of the public, the EIS determined that the proposed REX-West, Blanco-Meeker, and Wamsutter Expansion Projects would result in limited adverse environmental impact during construction and operation.

72. The EIS concluded that if the Rockies Western Phase Project is constructed and operated in accordance with applicable laws and regulations, each applicant's proposed mitigation, and the additional mitigation recommendations by our staff, it would be an environmentally acceptable action. Although many factors were considered in this determination, the principal reasons are:

- more than 99 percent of the REX-West facilities would be collocated with existing rights-of-way, while the Wamsutter Expansion Project would parallel existing rights-of-way for its entire length;
- the projects would be consistent with or in conformance with federal resource management plans;
- the applicants would implement resource- or activity-specific plans, procedures, and agreements to protect natural resources, avoid or limit environmental impact, and promote restoration of all disturbed areas during construction and operation of each project;
- Rockies Express would use an Agricultural Inspector knowledgeable in plains and midwestern farming practices, who would provide input and guidance during construction in agricultural areas;
- Rockies Express has developed Depth of Cover and Terrace Construction/Repair Plans that, along with staff's recommended revisions to these plans, would ensure that site-specific farming practices and related landowner concerns are met;
- the use of the horizontal directional drill (HDD) method would avoid disturbances to the beds and banks of the Missouri River and several other major waterbody crossings;
- the appropriate consultations with the FWS, the State Historic Preservation Officers (SHPO), the BLM, other affected land management agencies, and any

appropriate compliance actions resulting from these consultations, would be completed before the applicants would be authorized to begin construction in any given area; and

- an environmental inspection and monitoring program would be implemented to ensure compliance with all mitigation measures, certificate conditions, requirements contained in the BLM's Plan of Development and other stipulations included in permits from other authorizing federal, state, and local agencies.

73. We have reviewed the information and analysis contained in the EIS regarding potential environmental effect of the projects. Based on our consideration of this information, we agree with the conclusions presented in the EIS and find that Rockies Express,' TransColorado's, and Overthrust's projects, if constructed and operated as described in the EIS and in accordance with the recommended environmental mitigation measures in the Appendix to this Order, is environmentally acceptable. Therefore, we are including the environmental mitigation measures recommended in the EIS as conditions to the authorizations issued to Rockies Express, TransColorado, and Overthrust by this Order.

### **Landowner Concerns**

74. On March 19, 2007, Ms. Andrea Barker filed a letter following up on comments she made at a draft EIS comment meeting as well as on comments conveyed during several phone calls made to the Commission's Office of External Affairs and technical staff. As explained in the final EIS, Rockies Express' route passes north of the Barker property, but the pipeline route and workspaces do not cross it. Other industrial facilities (the Platte oil pipeline, an oil substation, and oil tank farm) are immediately adjacent to the Barker property to the south and west. Ms. Barker's concerns include perceived safety and egress issues, as well as the state of conversations and negotiations she has been having with Rockies Express personnel.

75. Staff addressed Ms. Barker's concerns in section 3.4.1.2 of the final EIS and concluded that "natural gas pipelines do not pose a significant danger to the public if constructed and operated in accordance with DOT regulations." Section 4.12 of the final EIS further discusses natural gas pipeline safety. All applicants for a certificate from the Commission under the NGA are required to comply with the DOT safety standards. Therefore, we believe that the risk posed by the project would be negligible.

76. We also note that DOT's regulations require that each pipeline operator establish and maintain liaison with appropriate fire, police, and public officials to learn the resources and responsibilities of each organization that may respond to a natural gas

pipeline emergency, and to coordinate mutual assistance. The pipeline operator must also establish a continuing education program to enable customers, the public, government officials, and those engaged in excavation activities to recognize a gas pipeline emergency and to report it to appropriate public officials. Thus, Rockies Express is required to ensure that local emergency service personnel have received appropriate training to respond to pipeline emergencies.

77. Ms. Barker also reports that she feels misled and misrepresented by Rockies Express personnel in conversations she has had with them. We expect applicants to engage in fair negotiations and communications with affected landowners and encourage community outreach with other residents. We encourage Rockies Express to continue discussions with Ms. Barker to resolve any outstanding issues.

### **The Indiana Bat**

78. REX-West will extend 176 miles across Missouri in areas where the FWS assumes there is habitat for the Indiana bat, a listed endangered species. Rockies Express, in consultation with the FWS, has identified approximately 205 individual trees in 42 woodlots located along the project in Missouri that are likely to provide potentially suitable habitat for bat roosting. The FEIS discusses the potential impact of the REX-West project on the Indiana bat and notes that the FWS recommended that Rockies Express could avoid adverse affects on this species if construction activity in Indiana bat habitat occurred outside the season for Indiana bat maternity roosting which is between April 1 and September 30. To meet this FWS recommendation, Rockies Express would have needed to remove all potential roost trees from the proposed right-of-way prior to April 1, 2007.

79. On March 19, 2007, Rockies Express filed a letter with the Commission asking for permission to enter the right-of-way immediately following issuance of a certificate order for the limited purpose of clearing all potential roost trees before April 1. Subsequently, the FWS acquiesced to a request by Rockies Express to extend its deadline for removal of roost trees to April 15, and Rockies Express encouraged the Commission to grant authorization to remove the trees before that date. However, the Council on Environmental Quality's regulations preclude the Commission from approving actions such as permanent removal of habitat until thirty days after the EPA's notice of the issuance of the FEIS for the project is published in the *Federal Register*.<sup>48</sup> Since notice of issuance of the FEIS for Rockies Express' project was published on March 23, 2007, the earliest date Rockies Express can remove the trees is April 22, assuming that the FWS

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<sup>48</sup> See 40 C.F.R. Part 1506.

will agree to another extension of its deadline and Rockies Express meets the requirements we are adding in the new environmental condition 40 in the appendix to this order.

80. We are adding environmental condition 40 because, if the FWS were to further extend the timing window in which Indiana bat maternity roost trees could be felled without requiring additional section 7 consultation under the Endangered Species Act, Rockies Express' opportunity to complete pre-construction clearing would be constrained if it has to wait for staff to review the comprehensive implementation plan and issue the project-wide construction approval that would otherwise be required in order to remove trees. To expedite this process, new environmental condition 40 describes the information Rockies Express needs to provide in a targeted tree-clearing plan, which it may submit upon acceptance of its certificate and receipt of an FWS timing extension.

81. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>49</sup> Rockies Express, TransColorado, and Overthrust shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies the applicant. The applicant shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

#### **E. Miscellaneous**

82. In a September 28, 2006 data request, staff asked Rockies Express to discuss the "opportunities to enhance efficiencies for any energy consumption processes in the development and operation" of the Rex-West project. The data request also sought a discussion of "the feasibility of installing waste heat cogeneration facilities" at two of Rex-West's compressor stations. Rockies Express provided a response on October 27, 2006.

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<sup>49</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

83. As to the energy efficiency question, Rockies Express responded that it conducted a study in the early stages of project development and determined that it would utilize internal pipeline coating to optimize fuel consumption, reduce capital associated with the installed horsepower, and enhance the operational and fuel consumption efficiency of the pipeline. Rockies Express further stated that it is committed to monitoring “the pipeline’s efficiency on an on-going basis to determine when maintenance, such as line-pigging, is required to maintain high levels of efficiency.” Moreover, among other things, Rockies Express “plans to dispatch and utilize combinations of its compressor units in such a way to maximize efficiency and to minimize fuel” consumption, to “periodically evaluate motor and other auxiliary equipment to maintain efficient use of power,” and to install “state-of-the-art electronic measurement” equipment.

84. Rockies Express also indicated that during the construction planning stages, it had considered “the feasibility of facilities that would capture waste heat generated by the compressor facilities” and concluded that implementation of a waste heat capture process was not feasible as part of the initial construction of the pipeline, “given the in-service timeline required and the short time frame between identifying the size, location and output of the proposed compressors and the filing of the application.” Rockies Express also suggested that it would need to consider the rate implications and potential Standard of Conduct implications of generating and selling electricity. Furthermore, Rockies Express conferred with a third party with experience in the waste heat recovery field and also stated that it planned to continue to explore with interested third party developers whether the cogeneration sites could be economically developed for cogeneration.

85. To this end, on December 7, 2006, Rockies Express submitted additional information from two potential third party developers of waste heat recovery projects, which concluded it did not appear feasible to incorporate significant energy recovery opportunities into the initial design and construction of the facilities. The third party developers concluded that “it does not appear that the benefits of energy recovery will be significantly diminished by installing recovery equipment on a retrofit basis, rather than as part of the initial construction.” The third party developers also raised various technical issues that must be considered prior to the development of a detailed plan that would allow a decision to proceed with a specific waste heat recovery project and provided timelines for addressing those issues. To address implementation issues, one of the third party developers provided a process and possible timeline to assess and develop pipeline energy recovery projects. Rockies Express concluded that it would continue to explore the commercial feasibility and option for waste heat recovery technologies on its system.

86. We would like to know the results of these efforts and direct Rockies Express to file information annually on what it learns during the three-year period after its in-service date.

87. At a hearing held on April 19, 2007, there was received and made a part of the record in these proceeding all filed evidence, including the application and exhibits thereto, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP06-354-000 authorizing Rockies Express to construct and operate certain facilities described in this order, and more fully described in the September 21 Order and in the application.

(B) A certificate of public convenience and necessity is issued in Docket No. CP06-401-000 authorizing TransColorado to construct and operate certain facilities, as more fully described in this order and in the application.

(C) A certificate of public convenience and necessity is issued in Docket No. CP06-423-000 authorizing Overthrust to construct and operate certain facilities, as more fully described in this order and in the application.

(D) The certificate authority issued in Ordering Paragraphs (A), (B) and (C) shall be conditioned on the following:

- (1) Applicants' completion of the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Applicants' compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;
- (3) Applicants' execution of firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction; and

(4) Applicants' compliance with the environmental conditions listed in the Appendix to this order.

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

(F) In Docket No. CP06-354-001, Yates' request for rehearing is denied.

(G) Rockies Express' proposed initial rates are approved.

(H) Within three years after its in-service date, Rockies Express must make a filing to justify its existing cost-based firm and interruptible recourse rates. In the alternative, in lieu of this filing, Rockies Express may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(I) Rockies Express' request for a presumption of rolled-in rate treatment for the proposed Wamsutter compression and the Echo Springs compression and supply lateral is granted.

(J) A certificate of public convenience and necessity is issued to Rockies Express authorizing it to lease capacity from Overthrust, as described and conditioned herein.

(K) Overthrust must recalculate its proposed initial rates for firm and interruptible transportation services as discussed in the body of this order. Overthrust must maintain its records for the expansion project in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(L) Overthrust's proposals to adopt a fuel tracker in section 35 and to change the inert substance provision of section 14.7 of its tariff are rejected without prejudice to it refiling the proposed changes in a limited section 4 proceeding.

(M) Overthrust is authorized to abandon by lease to Rockies Express, 625,000 Dth/d of firm capacity on Overthrust's system as conditioned and described herein.



(N) TransColorado's request for a presumption of rolled-in rate treatment for the proposed Blanco-Meeker Expansion is granted, subject to the conditions described in the body of this order.

(O) Each applicant must file, no less than 30 days, or more that 60 days, prior to commencing service, actual tariff sheets consistent with its respective pro forma tariff sheets as revised in this order and in the September 21 Order.

(P) In Docket Nos. CP06-354-000, CP06-401-000 and CP06-423-000, the late intervention of the Missouri Department of Conservation is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,  
Secretary.

## Appendix

### **Environmental Conditions for Rockies Express' REX-West Project, TransColorado's Blanco-Meeker Expansion and Overthrust's Wamsutter Expansion.**

#### Conditions applicable to all three Applicants

1. The Applicants shall follow the construction procedures and mitigation measures described in their respective applications, supplemental filings (including responses to staff data requests), and as identified in the EIS, unless modified by this Order. Each Applicant must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Rockies Western Phase Project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, each Applicant shall file an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the final EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, each Applicant shall file any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Each Applicant shall file detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by each Applicant's Upland Erosion Control, Revegetation, and Maintenance Plan, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of its certificate and **before the start of construction**, each Applicant shall file an initial Implementation Plan for the review and written approval of the Director of OEP describing how the Applicant will implement the mitigation measures required by this Order. Each Applicant must file revisions to the plan as schedules change. The plan shall identify:
  - a. how the Applicant will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
  - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - d. the training and instructions the Applicant will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - e. the company personnel (if known) and the specific portion of the Applicant's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) the Applicant will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of on-site personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Each Applicant shall file updated status reports prepared by the lead environmental inspector on a **weekly** basis **until all construction-related activities, including restoration, are complete**. These status reports shall also be provided to other federal and state agencies with permitting responsibilities upon request. Status reports shall include:
  - a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

- b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors or the third-party compliance monitors during the reporting period (both for the conditions imposed by the FERC and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by the Applicant from other federal, state, or local permitting agencies concerning instances of noncompliance, and the Applicant's response.
8. Each Applicant shall develop and implement an environmental complaint resolution procedure that remains active for at least 3 years following the completion of construction for the respective project. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Rockies Express, TransColorado, and Overthrust shall mail the environmental complaint resolution procedures to each landowner whose property would be crossed by the respective project.
- a. In the letter to affected landowners, each Applicant shall:
    - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon to expect a response;
    - ii. instruct the landowners that, if they are not satisfied with the response, they should call Rockies Express', TransColorado's, or Overthrust's Hotline, as applicable; the letter should indicate how soon to expect a response; and
    - iii. instruct the landowners that, if they are still not satisfied with the response from the Applicant's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at [hotline@ferc.gov](mailto:hotline@ferc.gov).
  - b. In addition, each Applicant shall include in its weekly status reports a table that contains the following information for each problem/concern:

- i. the identity of the caller and the date of the call;
  - ii. the identification number from the certificated alignment sheet(s) of the affected property and appropriate location by milepost;
  - iii. a description of the problem/concern; and
  - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. Each Applicant must receive written authorization from the Director of OEP **before commencing service of its respective project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, each Applicant shall file an affirmative statement, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions the Applicant has complied with or will comply with. This statement also shall identify any area affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Each Applicant shall file a noise survey, for each new or modified compressor station, **no later than 60 days** after placing the respective compressor station(s) into service. If the noise attributable to the operation of any of the new or modified compressor stations exceeds an  $L_{dn}$  of 55 dBA at any nearby noise sensitive area (NSA), the respective Applicant shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year** of the in-service date. The Applicant must confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.
12. If any of the Applicants propose weekend and/or 24-hour pile driving, that Applicant shall develop a noise mitigation plan to reduce noise levels during the weekend and/or nighttime period and document that the noise mitigation plan effectively reduces noise from construction pile driving activities at any nearby NSAs. The noise mitigation plan must be filed for the review and written

approval of the Director of OEP **prior to the initiation of any weekend or nighttime pile driving activities.**

13. Each Applicant shall develop a Hydrostatic Testing Plan that includes, but is not limited to, the following information:
  - a. a list identifying the location of all waterbodies proposed for use as a hydrostatic test water source or discharge location;
  - b. the screen size proposed for use on intake hoses to prevent entrainment of fish;
  - c. documentation of consultation with appropriate federal and state agencies regarding the establishment of water withdrawal rates that would ensure that these withdrawals would have minimal impact on flows, fisheries, and downstream water users; and
  - d. documentation from private or municipal water systems regarding the proposed purchase and use of water for hydrostatic testing.

This Hydrostatic Testing Plan shall be filed for the review and written approval of the Director of OEP, **prior to initiation of any hydrostatic testing.**

Conditions applicable only to Rockies Express

14. Rockies Express shall revise its Wetland and Waterbody Construction and Mitigation Procedures to:
  - a. use a 100-foot-wide right-of-way for non-saturated emergent and scrub-shrub wetlands; and
  - b. use a 75-foot-wide right-of-way for forested and saturated wetlands.

Rockies Express shall incorporate these revisions in its pre-construction planning, revising the REX-West construction alignment sheets, as necessary, to accommodate the revised work areas. For any forested or saturated wetland Rockies Express believes requires a right-of-way width greater than 75 feet, Rockies Express must file site-specific justification in its implementation plan for the project. Any such requests must be approved/disapproved on a case-by-case basis by the Director of OEP.

15. Rockies Express shall incorporate the Woolsoncroft Route Variation, as depicted in figure 3.4-3 of the final EIS and described in the accompanying text, into the final routing of the pipeline.

16. Rockies Express shall incorporate the Emmendorfer-Hall Route Variation, as depicted in figure 3.4-4 of the final EIS and described in the accompanying text, into the final routing of the pipeline.
17. Rockies Express shall incorporate the Unternaehrer Route Variation, as depicted in figure 3.4-5 of the final EIS and described in the accompanying text, into the final routing of the pipeline.
18. Rockies Express shall construct across the Crutchfield property along a route adjacent to and south of the existing single-pole electric powerline right-of-way.
19. Rockies Express shall file its Blasting Plan for the review and written approval of the Director of OEP **prior to the commencement of any project-related blasting activities**. The Blasting Plan must also contain Rockies Express' plan for rock disposal.
20. **Prior to construction**, Rockies Express shall file a site-specific plan to actively monitor depth of cover over the pipeline in the Sand Hills area (approximate mileposts 191 to 217), including restoration and post-construction mitigation measures to ensure adequate depth of cover and right-of-way stability in the Sand Hills area. This plan must be filed for review and written approval by the Director of OEP.
21. **Prior to construction**, Rockies Express shall file any site-specific crossing plans and minimization measures regarding vegetation communities of special concern. This information must be filed for the review and written approval of the Director of OEP.
22. **Prior to construction**, Rockies Express shall file its noxious weed control plan, along with any applicable local agency documentation showing approval of the plan, for review and written approval of the Director of OEP.
23. **Prior to construction**, Rockies Express shall file the results of the most recent raptor nest surveys and the appropriate seasonal buffer zone for all active raptor nests in Wyoming within 1 mile of the construction right-of-way for ferruginous hawks and bald eagles and within 0.5-mile of the construction right-of-way for all other raptors. In Colorado and Nebraska, Rockies Express shall file this information for areas within 0.5 mile of the construction right-of-way for eagles, falcons, and ferruginous hawks, and within 0.25 mile of the construction right-of-way for all other raptors, as well as any additional comments and recommendations resulting from the agency consultations. Seasonal buffer zones must be drawn on project maps and construction alignment sheets.



24. Rockies Express must file the results of consultation with the BLM regarding records of raptor nests occurring along the Echo Springs Lateral route. Rockies Express shall file this information for the review and written approval of the Director of OEP **prior to beginning construction of the Echo Springs Lateral.**
25. **Prior to construction,** Rockies Express shall file the results of its preconstruction bald eagle nest surveys. Rockies Express shall not begin construction until staff has reviewed the survey reports, completed any necessary Section 7 consultation for the bald eagle with the FWS, and the Director of OEP notifies Rockies Express in writing that construction may proceed.
26. If a previously unidentified active bald eagle nest is encountered within 1 mile of the construction right-of-way, Rockies Express shall concurrently notify the Commission staff, the BLM (if on federal land), and the FWS, and file the notification. Rockies Express shall **not continue with construction** within 1 mile of the nest until staff has reviewed the information, completed any necessary Section 7 consultation on the bald eagle with the FWS, and the Director of OEP notifies Rockies Express in writing that construction may proceed or use of mitigation may begin.
27. Rockies Express **shall not begin or continue with construction** within 0.5 mile of any bald eagle communal roost site (1 mile in Wyoming) between November 15 and March 15 until the Commission staff has reviewed the information, completed any necessary Section 7 consultation for the bald eagle with the FWS, and the Director of OEP notified Rockies Express in writing that construction or use of mitigation may begin.
28. **Prior to construction,** Rockies Express shall file its bald eagle roosting/nesting tree assessment along with any agency comments. For any potential roost/nest tree that Rockies Express believes must be removed (*i.e.*, can not be avoided by use of HDD or by routing), Rockies Express must file a detailed justification as to why the tree must be removed, including measures considered before determining removal was necessary. Rockies Express shall not remove any potential bald eagle roosting or nesting tree until the Commission staff receives comments from the FWS regarding the proposed action, completes any necessary Section 7 consultation for the bald eagle with the FWS, and the Director of OEP notifies Rockies Express in writing that construction or use of mitigation can begin.
29. If a whooping crane is discovered within 1 mile of construction, Rockies Express shall not continue construction activities within 1 mile of the crane until the Commission staff receives comments from the FWS regarding the whooping crane, completes any necessary Section 7 consultation with the FWS, and the

Director of OEP notifies Rockies Express in writing that construction or use of mitigation can begin.

30. Rockies Express **shall not construct in the 42 tracts** identified in its habitat assessment as containing suitable Indiana bat maternity roost habitat **between April 1 and September 30**, unless Rockies Express agrees to use the targeted survey option for the Indiana bat in coordination with the FWS.
31. Rockies Express shall file its final alternative/contingency crossing plan for the Missouri River. Rockies Express shall not begin a non-HDD crossing of the Missouri River until the Commission staff evaluates the potential impact of a non-HDD crossing of the Missouri River on the pallid sturgeon, the staff completes any required Section 7 consultation for the pallid sturgeon with the FWS, the staff determines that the alternative crossing and/or mitigation plan is acceptable, and the Director of OEP notifies Rockies Express in writing that it may proceed with the alternative river crossing method.
32. **Prior to construction of the North Elm Creek crossings**, Rockies Express shall file site-specific survey, mitigation, and crossing plans for each of the three North Elm Creek crossing locations (Mileposts 447.4, 450.8, and 455.1) with regard to the Topeka shiner. Rockies Express shall also file comments from the FWS and Kansas Department of Wildlife and Parks regarding the proposed seining, construction, and restoration measures. These plans and comments must be filed for the review and written approval of the Director of OEP.
33. **Prior to construction in American burying beetle habitat**, Rockies Express shall trap and relocate American burying beetles, according to FWS protocol, **if** the 2007 surveys confirm the presence of the American burying beetle **and** Rockies Express proposes to construct in occupied American beetle habitat prior to October 30, 2007. **Prior to beetle trapping**, Rockies Express must file its trapping/relocating plan for the review and approval of the Director of OEP. The plan must contain the following information:
  - a. description of specific FWS protocols and any additional methods to be followed;
  - b. name(s) and qualifications of the person(s) expected to conduct the trapping;
  - c. date(s) the trapping is expected to take place;
  - d. specific areas (by milepost) where beetles would be trapped;
  - e. an analysis of potential impacts that could result from the construction of the proposed project;

- f. confirmation that the FWS has approved the plan, including trapping and relocating methods, qualifications of the trappers, and the need for any permits; and
  - g. any additional comments from the FWS and/or state agency.
34. Rockies Express **shall not construct in those locations** where suitable habitat for the Ute ladies'-tresses or Colorado butterfly plant would be crossed by the REX-West Project until it has completed species-specific surveys to determine whether or not the plant(s) are present. If plants are present, Rockies Express must avoid the populations by either a bore or reroute, unless otherwise permitted by the FWS. Route modifications must be filed for the review and written approval of the Director of OEP.
35. Rockies Express shall submit the results of any consultations with the Wyoming Game and Fish Department and Colorado Division of Wildlife regarding the plains sharp-tailed grouse. The results of any surveys, conservation measures, and state agency correspondence (including recommendations) must be filed **prior to construction**.
36. Rockies Express shall, in consultation with landowners who maintain agricultural terrace structures, develop site-specific construction and restoration procedures for all agricultural terrace lands crossed by the REX-West Project. These plans must include specific measures to minimize impacts on existing terrace structures. Rockies Express must file these plans **prior to construction** for the review and written approval of the Director of OEP.
37. **Prior to construction**, Rockies Express shall file a final depth of cover table that contains each milepost stretch where Rockies Express has reached an agreement with a landowner to construct with at least 4 feet of cover. These locations must be clearly marked on the construction drawings.
38. Rockies Express shall develop and implement a post-construction monitoring program to evaluate crop productivity and the success of right-of-way restoration in active cropland for a period of 5 years following construction. Rockies Express shall also evaluate the direct effects of compression-related soil heating (including, but not limited to, soil temperature, soil moisture, and crop yield) for a distance of 5 miles (or the extent of cultivated cropland, whichever is less) downstream of the REX-West compressor stations. Rockies Express shall file quarterly reports for a period of 5 years following construction that document any problems identified by the company or landowner and describe any corrective action taken to remedy those problems. If any landowner and Rockies Express agree that crop productivity is acceptable prior to the 5-year requirement, Rockies Express must

provide documentation in its quarterly reports indicating which landowners have agreed that monitoring is no longer necessary. This documentation shall include the landowner's name, the identification number from the certified alignment sheets of the landowner's property, the approximate milepost location, and the date of the agreement.

39. Rockies Express shall **defer construction** and use of facilities, including staging, storage, and temporary work areas and new or to be improved access roads **until**:
- a. Rockies Express files all additional required cultural resource inventory and evaluation reports, and necessary avoidance or treatment plans, as well as any additional information that the SHPOs or the BLM has requested;
  - b. Rockies Express files copies of the appropriate SHPO and BLM comments on all reports and plans;
  - c. the Advisory Council on Historic Preservation has been provided an opportunity to comment if any historic properties would be adversely affected; and
  - d. the Director of OEP reviews and approves all reports and plans and notifies Rockies Express in writing that it may proceed with treatment or construction.

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

40. Rockies Express shall not begin selective clearing of Indiana bat maternity roost trees until it receives a timing extension from the FWS and files a tree-clearing plan that includes:
- a. the method of tree clearing and removal;
  - b. either an aerial photograph or construction drawing that shows the location (by tract and milepost) of each tree relative to the construction right-of-way; and
  - c. either evidence or a statement affirming landowner approval.

Conditions applicable only to TransColorado

41. **Prior to construction**, TransColorado shall file the results of any raptor surveys along with any agency comments and recommendations for the review and written approval of the Director of OEP.

42. TransColorado shall **defer construction** and use of facilities, including any staging, storage, and temporary work areas and new or to be improved access roads **until**:

- a. TransColorado files the New Mexico SHPO's opinion on whether or not additional cultural resource surveys are required for the proposed facilities in New Mexico;
- b. files the New Mexico and Colorado SHPOs' comments on the contact program with Indian tribes;
- c. files the SHPOs' comments on TransColorado's Unanticipated Discovery Plans;
- d. files any additional required cultural resource inventory and evaluation reports, and necessary avoidance or treatment plans, and the comments of the New Mexico and Colorado SHPOs on all reports and plans, not previously filed; and
- e. the Director of OEP reviews and approves all reports and plans and notifies TransColorado in writing that it may proceed.

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