

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.

Northern Natural Gas Company

Docket No. CP06-403-000

ORDER ISSUING CERTIFICATE  
AND GRANTING ABANDONMENT AUTHORITY

(Issued February 21, 2007)

1. On June 23, 2006, in Docket No. CP06-403-000, Northern Natural Gas Company (Northern) filed an application under section 7 of the Natural Gas Act (NGA)<sup>1</sup> for (1) certificate authorization to construct, modify and operate pipeline, compression and town border station facilities in Minnesota and Iowa, and (2) authority to abandon in place or by removal certain pipeline facilities. Northern requests a predetermination supporting rolled-in rate treatment for the expansion costs. The facilities proposed herein constitute the first discrete stand-alone project under the umbrella of the Northern Lights Expansion Project, a multi-year commitment to expand Northern's market area capacity to meet its customers' expected future growth requirements through 2026.

2. In this order, the Commission finds that the proposed expansion project and abandonments are required and permitted, respectively, by the public convenience and necessity. Therefore we will grant the requested authorizations, subject to the conditions set forth herein.

**I. Background And Proposal**

3. Northern announced the Northern Lights Expansion Project in an open season held May 2, 2005, through June 30, 2005, and extended through August 4, 2005. All current or potential shippers had the opportunity to participate in the open season. The open season was held to solicit interest and identify and quantify market growth opportunities and the need to construct facilities to meet these requirements.

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<sup>1</sup> 15 U.S.C. § 717f (2005).

4. Pursuant to the open season, Northern has entered into precedent agreements or executed transportation service agreements with 24 market-area shippers for aggregate incremental peak day transportation services of 374,225 Dth/day for the 2008-2009 heating season. Northern states that the proposed incremental capacity will serve new electric power loads and will meet increased agricultural, industrial, commercial and residential requirements. Northern emphasizes that the incremental transportation services will include the transportation of 71,650 Dth/day for use as fuel in new ethanol plants, thereby promoting the national energy policy to reduce dependence on imported oil consistent with the objectives of the Renewable Fuels Standard provisions of the Energy Policy Act of 2005.<sup>2</sup>

5. Northern states that its proposed project achieves expansion efficiencies and minimizes landowner and environmental impacts. Northern requests rolled-in rate treatment for the proposed project, asserting that estimated costs of the expansion are less than projected revenues from the incremental service the project will support, as discussed below.

6. Northern proposes to construct, modify and operate: (1) approximately 67 miles of pipeline extensions and looping, approximately 5 miles of which would be additional greenfield pipeline; (2) replacement of about 5 miles of 3-inch diameter pipeline and 2 miles of 2-inch diameter pipeline with 12-inch and 8-inch pipeline, respectively;<sup>3</sup> (3) modifications at an existing compressor station; (4) new facilities at two town border stations;<sup>4</sup> and (5) modifications of facilities at 23 town border stations, entailing in most cases the replacement of meters and associated piping. Northern proposes to abandon in place or by removal approximately 16 miles of 16-inch pipeline.

7. Northern states that the instant proposal represents the first discrete, stand-alone project within the Northern Lights Expansion Project, and that the project has been

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<sup>2</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>3</sup> Approximately 3,660 feet of replacement pipeline will be installed adjacent to 1,980 feet of the 3-inch St. Michael branch line and 1,680 feet of the 2-inch Big Lake branch line, which will be taken out of service and left in place. The remaining replacement pipeline will be installed in the existing pipeline ditch from which the existing pipeline will be removed.

<sup>4</sup> The new facilities will include delivery facilities in an existing town border station yard which currently accommodates multiple customer delivery points.

designed to optimize the placement of facilities to accommodate growth requirements for a two-year period while taking into consideration anticipated customer growth needs to 2026. Northern states that the proposed facilities, in combination with other facilities Northern will construct under its Part 157 blanket certificate and currently available existing capacity, will enable Northern to meet shippers' requests for firm capacity submitted during the Northern Lights open season. Northern states that the instant project will enable it to provide approximately 374,000 Dth/day of incremental winter peak day firm service to meet residential, commercial and industrial customer market growth commencing with the 2008 heating season. Northern will operate the proposed facilities in an integrated manner with its existing facilities to provide additional pipeline reliability and flexibility for existing customers.

8. Three of Northern's market area customers -- CenterPoint Energy Minnesota Gas (CenterPoint), Xcel Energy, on behalf of Northern States Power-Minnesota (Xcel), and Flint Hills Resources, LP (Flint Hills) -- have entered into precedent agreements for 68.1 percent of the proposed incremental capacity. Northern states that most of the facilities need to be completed and placed in service by November 1, 2007, to provide service as requested. Approximately five miles of one of the proposed pipeline extensions in Iowa, the NBPL-IA/MN State E-Line, is not needed until November 1, 2008.<sup>5</sup> Therefore, Northern seeks approval to construct this five-mile extension of pipeline in 2008, to be ready for service by November 1, 2008.

9. Northern anticipates that the new facilities proposed in the instant application will cost \$129 million. Total pipe removal cost is estimated to be \$1,530,000 less \$819,000 of pipe salvage value, for a net cost of \$711,000. Northern intends to finance the project with internally generated funds.

10. Northern elected to construct additional pipeline rather than new compression to accomplish the proposed increase in capacity in order to maintain more efficient operations by optimizing pipeline pressure and line pack, which may lower maintenance and fuel costs. Northern states that actual fuel use charges are difficult to predict due to customers' ability to choose alternate receipt points.

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<sup>5</sup> The proposed NBPL State E-Line comprises 24 miles of 36-inch pipeline adjacent to existing pipeline or within the same ditch as a 16-inch line (the J-Line) that will be abandoned and removed in Hancock, Winnebago, and Worth Counties, Iowa.

## II. Notice And Interventions

11. Notice of Northern's application in Docket No. CP06-403-000 was issued on June 30, 2006, and published in the *Federal Register* on July 10, 2006.<sup>6</sup> Timely, unopposed motions to intervene<sup>7</sup> were filed by Alcoa Inc., jointly with United States Gypsum Company and USG Interiors, Inc.; CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas; Minnesota Energy Resources Company; Nicor Gas; Northern States Power Company (Minnesota), jointly with Northern States Power Company (Wisconsin); Semco Energy Gas Company; and Northern Municipal Distributors Group, jointly with and the Midwest Region Gas Task Force Association (Distributors).<sup>8</sup>

12. Minnesota Energy Resources Company (MERC) and Mittal Steel USA Inc. (Mittal Steel) filed late motions to intervene. No party opposes either motion to intervene. MERC and Mittal Steel have demonstrated interests in this proceeding, and the proceeding will not be disrupted nor will any party's interests be prejudiced by granting intervention at this stage of the proceeding. Accordingly, MERC's and Mittal Steel's motions to intervene are granted pursuant to Rule 385.214 (d) of the Commission's Rules of Practice and Procedure.<sup>9</sup> MERC and Mittal Steel support Northern's application and request expeditious approval.

13. The Iowa Utilities Board (IUB) filed comments asking the Commission to include a certificate condition requiring Northern to comply with the terms of an Agricultural Impact Mitigation Agreement. This request is addressed below in the environmental section of this order.

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<sup>6</sup> 71 *Fed. Reg.* 38,872 (2006).

<sup>7</sup> Timely, unopposed motions to intervene are automatically granted under Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214(c) (2006)

<sup>8</sup> Distributors state that each member of the Northern Municipal Distributors Group is a municipality, as defined by section 2(3) of the NGA, and owns and operates the local gas distribution system serving its area. Distributors state that members of the Midwest Region Gas Task Force Association are municipalities or small privately-owned local distribution companies. All members of both groups purchase transportation and other services from Northern.

<sup>9</sup> 18 CFR § 385.214(d) (2006).

14. Distributors seek assurances that other existing customers will not be asked to subsidize the customers that contract for the incremental capacity that would result from Northern's proposal. They state that they have protested filings by Northern in other dockets requesting approval of non-conforming contracts and associated discounts and benefits for some of the shippers that have requested portions of the incremental capacity proposed by Northern. They seek assurance that none of the findings, conclusions, or decisions issued in this docket will be determinative of any future issues raised in future rate proceedings concerning discounts and benefits granted to these parties. Unless they receive such assurance, they protest Northern's application.

15. Northern filed an answer to Distributor's comments on July 28, 2006. On August 14, 2006, Distributors filed an answer opposing Northern's request for leave to answer and answer. While answers to protests are generally prohibited by our Rules of Practice and Procedure,<sup>10</sup> the Commission finds good cause to waive Rule 213(a) to allow Distributors' and Northern's answers in order to clarify the issues in this proceeding.<sup>11</sup> Distributors' comments are addressed below.

### **III. Discussion**

#### **A. Certificate Policy Statement**

16. To determine whether a proposed project is required by the public convenience and necessity, we consider whether it satisfies the criteria set forth in the Commission's 1999 Policy Statement on New Facilities.<sup>12</sup> In this policy statement, the Commission established criteria for determining whether there is a need for a proposed project, balancing the public benefits against potential adverse impacts, and determining whether the proposed project serves the public interest. Our goal in evaluating proposed projects is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

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<sup>10</sup> 18 C.F.R. §385.213(a) (2) (2006).

<sup>11</sup> *See Northern Natural Gas Company*, 60 FERC ¶ 61,098 (1992).

<sup>12</sup> *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 at 61,748 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

17. Under the Certificate Policy Statement, the threshold requirement for existing 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 new 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 location of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we evaluate the project by balancing the public benefits to be achieved against the residual adverse effects. This is essentially an economic test. If the benefits outweigh the adverse effects on economic interests we will proceed to complete the environmental analysis where other interests are considered.

18. Northern has entered into agreements with 24 shippers for services commencing as early as November 1, 2007.<sup>13</sup> These commitments total an aggregated incremental peak day entitlement of 374,225 Dth for the 2008-2009 heating season.<sup>14</sup>

19. As discussed below, Northern has presented evidence that the incremental revenue from service utilizing the proposed facilities is expected to exceed the incremental cost of the facilities. If this proves to be the case, there will be no subsidization of the facilities by existing customers. Thus, we find that Northern's proposal satisfies the threshold requirement of the Certificate Policy Statement

20. Only 5 miles of the proposed new 67 miles of pipeline will be in greenfield areas; the other pipeline facilities will loop existing facilities and use existing pipeline rights of way and easements. Most of the proposed modifications to the town border station facilities will be made within existing town border station yards. The use of existing land rights minimizes the number of new landowners affected by construction and operation

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<sup>13</sup> Consistent with our standard practice, we will condition our certificate authorization so that construction may not commence until after Northern executes contracts that reflect the levels and terms of service represented in its precedent agreements.

<sup>14</sup> In accordance with the Certificate Policy Statement's direction that pipelines seek to size projects optimally, Northern solicited offers by existing shippers to turn back capacity that could be used to reduce the need for additional capacity and construction. Northern states that it received two requests from shippers, as part of the Northern Lights project, to turn back peak day capacity and that both were granted.

of new facilities, and minimizes the need to clear and maintain additional pipeline right of way, alleviating any adverse effects the project might have on landowners and communities.

21. Northern's project will not adversely affect other existing pipelines in the market or their captive customers since the purpose of Northern's proposed expansion project is to serve new gas requirements, not displace loads on other systems. The proposed facilities will benefit Northern's existing customers because they will be operated in an integrated manner with Northern's existing facilities, providing additional pipeline reliability and flexibility for Northern's existing customers. Further, Northern states that the proposed expansion is necessary to retain existing load and thus maintain billing determinants.<sup>15</sup>

22. Based on the benefits that the proposed expansion will provide and the minimal adverse impacts on existing customers, other pipelines, landowners or communities, we find, consistent with the Certificate Policy Statement, that approval of the project is required by the public convenience and necessity.

#### **B. Rolled-In Rate Treatment**

23. Northern requests that the Commission make a finding supporting rolled-in rate treatment for the costs of this proposed expansion. Northern states that the incremental revenues will exceed the incremental cost of service and, therefore, the costs can be rolled in without existing customers subsidizing the project. Northern also emphasizes that one of its reasons for undertaking this project is to retain CenterPoint's, Xcel's and Flint Hills' existing transportation load that Northern avers likely would have been lost to other interstate pipelines but for Northern's commitment to such an expansion. Northern states that annual revenues from these customers are approximately \$40.7 million and that losing these customers would result in substantially less revenue and fewer billing units in Northern's next general rate case.

24. Northern states that it will provide most of the new services at its maximum recourse rates under Rate Schedules TF and TFX rate for firm transportation. While some of the services will be provided at discounted rates, Northern states that contract

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<sup>15</sup> Northern asserts that CenterPoint, Xcel, and Flint Hills actively pursued bypass arrangements which would have resulted in Northern's losing load of 950,000 Dth/day and annual revenues of \$40.7 million if Northern had not committed to the Northern Lights Expansion Project.

revenues will be sufficient to recover the projects' costs. The expansion shippers will pay applicable electric compression charges, any other reservation and commodity charges approved by the Commission, plus fuel use and unaccounted for fuel.

25. Northern's Exhibit N shows calculations for the estimated \$21.8 million cost-of-service for the expansion services using cost elements underlying its currently effective maximum tariff rates, including the 9.39 percent overall rate of return, a 13.42 percent return on equity, a 1.5 percent annual depreciation rate, and the straight fixed-variable rate design approved in Northern's rate case settlement in Docket No. RP04-155-000.<sup>16</sup> Northern's comparison of the cost-of-service for the expansion over the first three years of operation to projected contract revenues from the 374,000 Dth/day of incremental capacity shows that revenues will exceed costs by \$2.9 million in the first year, by \$5.0 million in the second year, and by \$1.7 million in the third year. Northern includes a rate impact comparison at Exhibit P which shows that rolled-in treatment for the project's costs would decrease its currently effective Rate Schedule TFX and TF summer and winter rates by 0.8 to 0.9 percent.

26. Northern has shown that the projected incremental revenues from the additional capacity created by the expansion project will exceed the estimated costs of the expansion, notwithstanding that some of the expansion services will be provided at discounted rates. Therefore, we will grant Northern's request for a predetermination supporting rolled-in rate treatment for the costs of the expansion project in its next rate case, absent a material change in the circumstances forming the basis for this presumption.

**C. Distributors' Request for Clarification Regarding Discounted Rates**

27. In the event we approve Northern's project and its request for rolled-in rate treatment for the project's costs, Distributors ask that we confirm that the "approvals do not constitute any approval of the transactions, including any proposed rates, for rate-making purposes at this time".<sup>17</sup> Emphasizing that the threshold test for a presumption of rolled-in rate treatment is that there will be no subsidization of a project's costs by existing customers, Distributors assert that the Commission also should provide assurance that existing customers will not be forced to pay higher rates as the result of

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<sup>16</sup> *Northern Natural Gas Company*, 110 FERC ¶61,149 (2005).

<sup>17</sup> Distributors' Intervention, p. 4.



Northern's decision to offer discounts to shippers using the proposed expansion facilities. Distributors express concern that the Commission may not adhere to its usual practice of requiring discounts and other benefits to be supported in a general rate case.

28. As discussed above, the Commission has found, based on the information in Exhibits N and P of Northern's application, that incremental expansion revenues will exceed project costs, notwithstanding that some of the expansion services will be provided at discounted rates. If this proves not to be the case at such time as Northern seeks to roll the costs of these facilities into its system rates, then Northern will bear the burden of demonstrating that a roll in is nevertheless warranted.<sup>18</sup> In the event Northern files under section 4 to adjust its rate design to account for any rate discounts to expansion shippers, Northern will have the burden of proof to justify its discounts in the rate case where all parties will have an opportunity to challenge the discounts and to seek discovery regarding the purpose and level of any discounts.<sup>19</sup> The Commission grants Distributors' request for clarification consistent with this discussion.

#### **D. Environmental**

29. Northern used the Commission's pre-filing process for its proposed project. Northern filed its request to use the pre-filing process on November 29, 2005. Docket No. PF06-7-000 was established for this purpose and the Director of the Commission's Office of Energy Projects granted Northern's request by letter dated December 2, 2005. The purpose of the Commission's pre-filing process is to involve interested stakeholders early in the planning of natural gas projects, as contemplated by the National Environmental Policy Act of 1969 (NEPA)<sup>20</sup> and the regulations of the Council on

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<sup>18</sup> In this regard, we note that Northern asserts that, if it had not committed to the proposed expansion, CenterPoint, Xcel and Flint Hills likely would have bypassed its system, resulting in lower billing determinants in its next rate case and increased rates for remaining customers. We do not reach this argument here, since we are granting a presumption of rolled-in rate treatment based on Northern's evidence that its proposal will result in incremental revenues that exceed project costs. If it turns out that revenues do not exceed costs, Northern may present its arguments regarding the significance of this expansion project to maintaining existing load as part of its case for nevertheless being permitted to roll the project's costs into system rates.

<sup>19</sup> See *Northern Natural Gas Company*, 115 FERC ¶ 61,146 at P 11 (2006).

<sup>20</sup> 42 U.S.C. § 4331 *et seq.*

Environmental Quality (CEQ),<sup>21</sup> in order to identify and resolve issues prior to filing an application for the project wherever possible. The pre-filing proceeding for the instant expansion allowed approximately seven months of stakeholder input prior to Northern's filing of its formal application on June 23, 2006. Northern held several meetings with local agencies and public officials as well as seven public open houses. Northern sent informational mailings to potentially affected persons and maintained a project-specific website.

30. On February 23, 2006, in Docket No. PF06-7-000, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Northern Lights Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the *Federal Register*<sup>22</sup> and was mailed to 978 interested persons, including federal, state, and local officials, agency representatives, conservation organizations, Native American groups, local libraries and newspapers, and property owners affected by the proposed facilities. In response to the NOI staff received 16 comment letters, as follows: three from federal agencies; one from a state agency; six from Native American tribes; and six from other interested persons. Commission staff addressed all substantive comments in an Environmental Assessment (EA). The EA addresses soils, geology, water resources, fisheries, wetlands, vegetation, wildlife, endangered and threatened species, land use, cultural resources, air and noise quality, reliability and safety, alternatives to the proposed project, and cumulative impacts.

31. The EA was issued on November 3, 2006 with a 30-day comment period.<sup>23</sup> The EA was mailed to federal, state, and local agencies, Native American tribes, elected officials, public libraries, intervenors to the FERC proceeding, and other interested persons (*i.e.*, landowners and other individuals who provided scoping comments). We received two comment letters on the EA: one from the U.S. Environmental Protection Agency (EPA) and one from the Natural Resources Conservation Service (NRCS). The NRCS filed comments on December 12, 2006, stating that it agrees with the level and detail with which the Commission staff's EA assesses the potential environmental effects of the construction and operation of the proposed project.

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<sup>21</sup> 40 CFR Parts 1500 - 1508.

<sup>22</sup> 71 *Fed. Reg.* 10494 (March 1, 2006).

<sup>23</sup> The Natural Resources Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service were cooperating agencies in the preparation of the Environmental Assessment.

32. EPA filed comments on the EA on December 4, 2006, stating that the EA addresses many of the concerns raised in its previous comments relative to the NEPA documentation. EPA noted that approximately 35.37 acres of wetlands will be affected by the project, of which about five acres are forested wetlands in Minnesota. No forested wetlands would be converted to emergent wetlands in Iowa. In neither state would construction and operation of the project result in a net loss of wetlands area. In its comments EPA recommends a 3:1 wetlands replacement ratio to offset the conversion of forested wetlands to emergent wetlands in the project area in Minnesota.

33. Wetland impacts from the project and mitigation were discussed in the EA.<sup>24</sup> Staff noted that Northern had initiated consultation with the U. S. Army Corp of Engineers (COE), the Minnesota Pollution Control Agency, and Minnesota Department of Natural Resources to determine appropriate mitigation of forested wetlands. The appropriate mitigation requirements will be determined by these agencies pursuant to Section 404 of the Clean Water Act (CWA).<sup>25</sup>

34. Commission staff stated in the EA that Northern will be required to obtain a CWA section 404 Nationwide Permit from the St. Paul District COE for the portion of the project in Minnesota. In its comments on the EA, EPA recommended that Table 2 in the EA be supplemented to show that Northern will be required to obtain an individual CWA section 404 wetlands permit from the St. Paul District COE. Commission staff has confirmed with the St. Paul District COE that an individual section 404 wetlands permit will be required. It is unnecessary to revise the published Table 2, but the requirement that Northern obtain the permit is noted.

35. Also in its comments to the EA, EPA states that approximately 19 acres of upland forest/wildlife habitat would be lost because of tree removal for project construction. Some loss would be from mature upland forest in a Minnesota County Biological Survey Site of Moderate Biodiversity Significance, and some would take place within the Elk Creek Marsh Wildlife Management Area, in Iowa. EPA recommends that Northern “commit to actively compensating for the loss of trees associated with their proposal.”<sup>26</sup>

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<sup>24</sup> See EA, Section B.2.c, at pp. 34 – 38.

<sup>25</sup> 33 U.S.C. § 1344.

<sup>26</sup> EPA Comments, p. 2. In its scoping comments, EPA recommended that replacement trees be planted on a 1:1 ratio to offset any unavoidable tree loss.

36. We have reviewed the EA and examined the record of this proceeding and conclude that the compensation called for by EPA is not necessary. Northern agrees to implement a plan and procedures which will allow trees and large shrubs to reestablish to a limited degree in wetlands, and has taken steps, such as placing new pipelines with existing pipelines to minimize ground disturbance, and other avoidance measures, to sufficiently minimize impacts to forest lands. The EA noted that the majority of the 19 acres of forest land that would be affected comprise narrow linear segments along 50 miles of existing cleared ROWs, so that limited or no forest fragmentation would occur and local forestland impacts would be negligible. Impacts to sensitive communities including stands of native red oak and white oak, and forested riparian buffers along major waterbodies, would be avoided with horizontal boring techniques or directional drilling. Northern is required to follow our Plan and Procedures to minimize clearing for construction and operation of the proposed facilities. In light of these conditions, we do not find it necessary for Northern to develop a scheme of compensation for lost trees, since Northern will minimize such loss.

37. In its comments, EPA has suggested that if pipeline corrosion preventatives are used, they may become mobilized during hydrostatic testing of the pipelines and constitute a discharge pollutant. Water used in hydrostatic testing would be discharged through a filtration system to remove sediment or other pollutants. Since the EA did not define "other pollutants," EPA is concerned that the term may encompass corrosion inhibitors and asks that they be identified and their potential impacts to water quality assessed.

38. As noted in the EA,<sup>27</sup> hydrostatic testing water would not be pre-treated with biocides or other chemicals and discharge water would not be exposed to potential contaminants. Moreover, hydrostatic test water discharges are authorized in Iowa and Minnesota. Northern has initiated consultation with the appropriate agencies and will obtain the necessary permits for testing and discharge prior to construction. Northern will abide by mitigation measures of our Procedures and all conditions of the permits issued by the states of Iowa and Minnesota.

39. Based on the discussion in the EA, we conclude that if constructed in accordance with Northern's application, as supplemented, and with implementation of mitigation measures identified in this proceeding and in the staff's EA, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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<sup>27</sup> See EA, Section B.2.b, pp. 32-33.

40. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.<sup>28</sup> The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by the Commission.<sup>29</sup> Northern must 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 Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

#### **IV. Summary**

41. For the reasons discussed above, we find that the benefits of the proposed project will outweigh any potential adverse effects, that the proposed project is consistent with the Commission's Certificate Policy Statement on new facilities, and that the proposed new facilities and proposed abandonment of facilities are required and permitted, respectively, by the public convenience and necessity. We further find that, absent a significant change in circumstances, the costs associated with Northern's first discrete, stand-alone project as part of the Northern Lights Expansion Project will qualify for rolled-in rate treatment when Northern makes a future NGA section 4 rate filing to recover these costs.

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

#### **The Commission orders:**

(A) In Docket No. CP06-403-000, a certificate of public convenience and necessity is issued to Northern under section 7(c) of the Natural Gas Act, authorizing the first discrete part of the Northern Lights Expansion Project, as described herein and more fully described in the application, and as conditioned herein.

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<sup>28</sup> A list of the necessary Federal, State, and local permits, authorizations, or clearances required for the Northern Lights appears in the EA, page 9, Table 2.

<sup>29</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(B) Permission for and approval of Northern's abandonment of facilities, as more fully described herein and in the application, are granted. Northern shall notify the Commission of any abandonment of facilities within 10 days thereof.

(C) The authorizations issued in Ordering Paragraphs (A) and (B) are conditioned on Northern:

(1) constructing and making available for service the facilities described herein, pursuant to paragraph (b) of section 157.20 of the Commission's regulations, within two years of the issuance of this order;

(2) complying with all 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;

(3) executing contracts for the levels and terms of service represented in the precedent agreements with its customers, and;

(4) notifying 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 Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Northern is granted a predetermination supporting rolled-in rate treatment for the costs of the project authorized by this order in a future Natural Gas Act section 4 rate proceeding, provided there are no significant changes in relevant facts and circumstances.

(E) Northern's and Distributors' answers are accepted. Distributors' request for clarification is granted, consistent with the discussion in this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary

## APPENDIX

### Northern Natural Gas Company, Docket No. CP06-403-000

#### Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Northern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Northern must:
  - a. Request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. Justify each modification relative to site-specific conditions;
  - c. Explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. Receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the 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**, Northern shall file an affirmative statement with the Secretary, 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 EA, and as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Northern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to route variations required herein or extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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



- a. Implementation of cultural resources mitigation measures;
  - b. Implementation of endangered, threatened, or special concern species mitigation measures;
  - c. Recommendations by state regulatory authorities; and
  - d. Agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins**, Northern shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of the OEP describing how Northern will implement the mitigation measures required by this Order. Northern must file revisions to the plan as schedules change. The plan shall identify:
- a. How Northern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. The number of 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 Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - e. The company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
  - f. The procedures (including use of contract penalties) Northern will follow if noncompliance occurs; and
  - g. For each discrete facility, a Gantt or program evaluation and review technique (PERT) chart (or similar project scheduling diagram), and dates for the:
    - (1) Completion of all required surveys and reports,
    - (2) Mitigation training of onsite personnel,
    - (3) Start of construction, and
    - (4) Start and completion of restoration.

7. Northern shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
  - a. Responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
  - b. Responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. Empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. A full-time position, separate from all other activity inspectors;
  - e. Responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. Responsible for maintaining status reports.
  
8. Northern shall file updated status reports prepared by the head environmental inspector with the Secretary **on a biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. The current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. A listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. Corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. The effectiveness of all corrective actions implemented;
  - e. A description of any landowner/resident complaints which 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 Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.

9. Northern must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official that:
  - a. States 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. Identifies which certificate conditions Northern has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Northern shall file with the Secretary for review and written approval by the Director of OEP, a description of any areas with known groundwater contamination that would be affected by project construction activities in Minnesota and, if applicable, details on how construction and operation impacts to or from these sites would be avoided.
12. **Prior to construction**, Northern shall file with the Secretary for review and written approval by the Director of OEP, the location of municipal and public wells and wellhead protection areas within 200 feet of the project components in Minnesota and, if applicable, details on how construction and operation impacts to these features would be avoided.
13. Northern shall complete its data collection for impaired waterbodies crossed by the pipeline segments in Minnesota and file a copy of the data collection results with the Secretary **prior to construction**.
14. **Prior to construction**, Northern shall file with the Secretary for review and written approval by the Director of OEP, a summary of surface water protection areas crossed by the pipeline facilities, potable water intakes within three miles downstream of any waterbody crossing, and, if applicable, mitigation measures to avoid impacts to these features during construction and operation of the Project.

15. In the event the horizontal directional drilling (HDD) of a waterbody is unsuccessful, Northern shall file with the Secretary a site-specific plan for the crossing of each waterbody that includes scaled drawings identifying all areas that would be disturbed by construction. The Director of OEP must review and approve this plan in writing **before construction of the open-cut crossing**.
16. **Prior to construction**, Northern shall file with the Secretary for review and written approval by the Director of OEP, a site-specific construction plan for the use of a dry-ditch method for the crossing of the Tributary to Vermillion River at MP 4.07 by the E-Line Willmar Tie-Over.
17. Northern shall make every attempt to deploy HDD guide wires with no clearing of vegetation and shall, **prior to construction**, file for review and written approval by the Director of OEP revised alignment sheets that reflect this modification. If Northern determines that clearing is necessary for specific guide wires, Northern shall request a variance from our Procedures and provide justification for the clearing. This variance shall be filed with the Secretary for review and approval by the Director of OEP prior to clearing.
18. **Prior to construction** across wetlands FBEWBDA006 and FBEWBDA005 on the Faribault to Farmington E-Line, Northern shall determine which crossing method it would employ at these wetlands and file with the Secretary for review and written approval by the Director of OEP, a site-specific crossing plan for the proposed crossing method.
19. **Prior to construction**, Northern shall file with the Secretary a summary of all waterbody crossing permit conditions as specified by the regulatory agencies and a description of how these conditions were incorporated into the construction plans.
20. **Prior to construction** of the portion of the NBPL-IA/MN State Line E-Line that traverses the Elk Creek Marsh Wildlife Management Area (WMA) and Rice Lake State Game Wildlife Area, Northern shall file with the Secretary survey reports for the Baltimore checkerspot and silvery blue, documentation of correspondence from the Iowa Department of Natural Resources (IDNR), and a summary of mitigation required by IDNR.
21. Northern shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation

problems/concerns during construction of the Project and restoration of the ROW. **Prior to construction**, Northern shall mail the complaint procedures to each landowner whose property would be crossed by the project.

- a. In its letter to affected landowners, Northern shall:
  - (1) Provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
  - (2) Instruct the landowners that, if they are not satisfied with the response, they should call Northern's Hotline; the letter should indicate how soon to expect a response; and
  - (3) Instruct the landowners that, if they are still not satisfied with the response from Northern's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  
- b. In addition, Northern shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
  - (1) The date of the call;
  - (2) The identification number from the certificated alignment sheets of the affected property;
  - (3) A description of the problem/concern; and
  - (4) An explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

22. **Prior to construction** across the Elk Creek Marsh WMA and Rice Lake State Game Wildlife Area, Northern shall file with the Secretary for review and written approval by the Director of OEP, a summary of consultation with IDNR regarding the detailed crossing plans including IDNR's comments and any additional mitigation requirements.

23. **Prior to construction** across the Mississippi River and Rum River, Northern shall file with the Secretary, a summary of consultation with the Minnesota Department of Natural Resources (MnDNR) regarding the detailed crossing plans including MnDNR's comments and any additional mitigation requirements.

24. **Prior to construction** across Conservation Reserve Program (CRP) lands, Northern shall file with the Secretary a copy of the site-specific restoration plans for the CRP lands crossed by the Project and Farm Service Agency comments on the plans.
25. Northern shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, and use of all associated staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Northern files all cultural resources survey and evaluation reports, and any necessary treatment plans, and the Minnesota and Iowa State Historic Preservation Officers' comments with the Secretary; and
  - b. The Director of OEP reviews and approves all cultural resources survey reports, and notifies Northern in writing that treatment plans/mitigation measures may be implemented or construction 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."

26. Northern shall file with the Secretary, prior to any continuous (24 hour) drilling, a drilling noise analysis and mitigation and compliance plan for each residence at the locations where the Ldn sound level from HDD drilling activities would be greater than 55 dBA. This plan shall demonstrate that noise due to drilling operations would be below 55 dBA Ldn at the nearest Noise Sensitive Areas (NSAs), and specify all noise mitigation equipment necessary to reduce noise below 55 dBA Ldn. Northern shall detail the method by which they would ensure compliance. Where surveys indicate that noise attributable to drilling exceeds 55 dBA Ldn at any NSA, Northern shall:
- a. Immediately stop drilling and mitigate the noise at the affected NSAs to reduce the noise levels at those NSAs to below 55 dBA Ldn or below; or
  - b. Offer temporary housing until Ldn levels at the NSAs are 55 dBA or below.
27. Northern shall provide large scale (1:3,600 or greater) plot plans for each blowdown valve identifying NSAs, such as residences, farms, houses of worship, recreation areas, hospitals, and schools, and quantify the noise levels at the NSAs that would result from blowdown. Northern shall identify

whether NSAs would be notified in advance of a planned blowdown, and whether noise mitigation equipment would be installed on the blowdown valve.