UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC Docket No. CP06-354-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued September 21, 2006)

1. On May 31, 2006, Rockies Express Pipeline LLC (Rockies Express)[1] filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate 713 miles of new natural gas transmission facilities with a capacity of 1,500,000 Dth per day (Dth/day) commencing at the Cheyenne Hub, located in Weld County, Colorado, and extending to an interconnection with Panhandle Eastern Pipe Line Company (PEPL) located in Audrain County, Missouri (REX–West or the Project). Rockies Express also proposes certain additions to its currently certificated facilities located to the west of the Cheyenne Hub as well as a long-term lease of capacity from Questar Overthrust Pipeline Company (Overthrust). REX-West will provide a direct link for supplies of natural gas in the Rocky Mountains to major markets in the United States.

2. In this order, the Commission makes a preliminary determination that Rockies Express' proposals, subject to the conditions discussed herein, are in the public interest. While our findings here support issuance of Rockies Express' requested authorizations, this order does not consider or evaluate any of the environmental issues in this proceeding. These issues are still pending and will be addressed in a subsequent order

[1] 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."

when the environmental review and analysis are complete.[2] Thus, final approval of Rockies Express' proposal is dependent on a favorable environmental review and nothing in this order limits our actions regarding our environmental analysis.

I. Background

3. Rockies Express is a Delaware limited liability company that is wholly owned by West2East Pipeline LLC (West2East). West2East is currently owned 51 percent by a subsidiary of Kinder Morgan Energy Partners, L.P (Kinder Morgan), 25 percent by a subsidiary of Sempra Energy, and 24 percent by a subsidiary of ConocoPhillips Company (ConocoPhillips).[3]

4. Rockies Express is a natural-gas company as defined by section 2(6) of the NGA and is subject to the jurisdiction of the Commission. 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).[4] 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 pipeline eastward to the Cheyenne Hub in Weld County, Colorado (Segment 2). The Phase I pipeline facilities will have a capacity of 750,000

[2] Certain related facilities to be constructed by Overthrust and TransColorado Gas Transmission Company (TransColorado), pursuant to pending applications described below, will be included in an Environment Impact Statement with the REX-West Project.

[3] *See* July 28, 2006 supplemental filing at 4. Rockies Express also states that upon completion of construction of the project, the ownership interests of the subsidiaries of Kinder Morgan and ConocoPhillips will change to 50 percent and 25 percent, respectively.

[4] *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 (2005), *order on reh'g*, 113 FERC ¶ 61,327 (2005). On November 7, 2005, Entrega Gas Pipeline Inc., a Delaware corporation (the name under which the original application was filed), filed a certificate of conversion with the Office of the Secretary of State of the State of Delaware to convert "Entrega Gas Pipeline Inc." to a Delaware limited liability company, "Entrega Gas Pipeline LLC." On November 8, 2005, Entrega Gas Pipeline LLC filed a notification of the change with the Commission.

Dth/day. Rockies Express states that construction of Segment 1 has been completed and is in interim service. Rockies Express states that Segment 2 is projected to be placed in service on January 1, 2007.

5. For Phase II, Rockies Express was authorized to construct three compressor stations referred to as the Meeker, Bighole, and Wamsutter Compressor Stations. The Phase II compression facilities will increase the capacity of the Phase I facilities from 750,000 Dth/day to 1,500,000 Dth/day. The Phase II facilities have a projected April 2007 in-service date. EnCana Marketing (USA) Inc. (EnCana) is the only firm shipper on the Rockies Express Certificated Facilities.

6. By order issued on August 22, 2006, the Commission amended Rockies Express' certificate authorization to permit it to construct the Big Hole Compressor Station using a total horsepower (hp) of 7,700 rather than the originally authorized total of 30,000 hp.[5] The amended facilities result in a capacity of 1,100,000 Dth/day from Meeker to Wamsutter while maintaining a capacity of 1,500,000 Dth/day downstream of Wamsutter. The modification of the originally certificated facilities was necessary to efficiently match a reconfiguration in customer transportation demand resulting from development of the REX-West project that is the subject of this proceeding. Customers no longer sought to source all of their gas at the Meeker Hub at the south end of the system, but desired to obtain a significant amount from the Opal Hub in Wyoming via Wamsutter as part of the REX-West project.

II. <u>Proposal</u>

7. Rockies Express states that its proposed pipeline project directly addresses the need for new pipeline infrastructure to link natural gas production in the Rocky Mountains with markets in the midwestern United States. Rockies Express maintains that it has worked with producers, marketers, and other pipeline companies to structure the Project utilizing existing infrastructure in the region rather than build duplicative pipeline facilities. The design capacity of REX-West is 1,500,000 Dth/day.[6] Upon the

[5] *Rockies Express Pipeline, LLC*, 116 FERC ¶ 62,151 (2006).

[6] The design of the REX-West project requires an MAOP of 1480 psig. In order to operate its system at pressures up to 1480 psig, Rockies Express requested, and on July 11, 2006, received from the Department of Transportation-Pipeline and Hazardous Materials Safety Administration (USDOT-PHMSA), a grant of waiver to operate at hoop stresses up to 80 percent of the pipe's specified minimum yield strength in Class 1 locations. *See* 71 Fed. Reg. 39,141 (July 11, 2006). Issuance of the waiver by USDOT-PHMSA assures Rockies Express' ability to reliably and safely operate its pipeline.

completion of REX-West, Rockies Express states it will own one pipeline system that, in total, will be a 1,040-mile pipeline that commences at an interconnect with TransColorado at the Meeker Hub in Rio Blanco County, Colorado, proceeds 136 miles northward to Wamsutter, Wyoming, and then proceeds 904 miles eastward, through the Cheyenne Hub, to Audrain County, Missouri. In addition, Rockies Express seeks authorization to lease capacity from Overthrust, stating that the lease will extend the Rockies Express system approximately 140 miles west from Wamsutter to the Opal Hub. The Project will provide producer/shippers transporting gas from the major points of production in and around the Rocky Mountain region a seamless transportation path to major markets.

8. Rockies Express also states it intends to file a separate, independent application, known as REX-East, to construct facilities to extend the proposed REX-West facilities from Audrain County, Missouri to Clarington, Ohio.[7] REX-East will increase the capacity of REX-West from 1,500,000 Dth/day to 1,800,000 Dth/day. Rockies Express submits that REX-West, however, does not rely on the construction of REX-East because shippers on REX-West are committed to the Project, regardless of whether REX-East is constructed.[8]

9. Rockies Express requests that the Commission issue a preliminary determination on the non-environmental aspects of this Project in order to provide necessary regulatory certainty that the non-environmental components of the Project meet the requirements of the NGA. Specifically, Rockies Express requests approval of the non-environmental issues related to the Project, including: (1) the conduct of the open season; (2) the proposed tariff and rate structure; (3) the precedent agreements signed by the parties; and (4) the Capacity Lease with Overthrust. Rockies Express requests that the preliminary determination be issued on or before October 1, 2006, and a certificate be issued by the end of March 2007 in order to accommodate a January 1, 2008, projected in-service date.

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[7] By letter dated June 1, 2006, in Docket No. PF06-30-000, Rockies Express initiated the National Environmental Protection Act pre-filing process for the proposed REX-East project.

[8] Rockies Express states that the precedent agreements executed by shippers for transportation service on both REX-West and REX-East provide that each shipper will enter into firm transportation service agreements (FTSA) for each. Upon the in-service date of REX-East, each shipper’s FTSA for REX-West will be superceded in its entirety by its FTSA for REX-East.

A. Rockies Express' Proposed New Facilities

10. Rockies Express proposes 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 PEPL in Audrain County, Missouri. These facilities will be located in: Weld, Logan, and Sedgwick Counties, Colorado; Laramie County, Wyoming; Kimball, Perkins, Lincoln, Dawson, Frontier, Gosper, Phelps, Kearney, Franklin, Webster, Nuckolls, Thayer, Jefferson, and Gage Counties, Nebraska; Marshall, Nemaha, Brown, and Doniphan Counties, Kansas; and Buchannan, Clinton, Caldwell, Carroll, Chariton, Randolph, and Audrain Counties, Missouri. Rockies Express states that over 99 percent of the pipeline will parallel existing pipeline rights-of-way.

11. Rockies Express also proposes to construct four new mainline compressor stations consisting of: (1) 35,000 ISO-rated hp at Cheyenne Compressor Station located in Weld County, Colorado; (2) 35,000 hp at Julesburg Compressor Station located in Sedgwick County, Colorado; (3) 41,000 hp at Steele City Compressor Station located in Gage County, Nebraska; and (4) 35,000 hp at Turney Compressor Station located in Clinton County, Missouri.

12. In addition, Rockies Express proposes to add certain facilities to the Rockies Express Certificated Facilities. Specifically, as part of this REX-West application, it proposes to construct and operate: (a) one additional 10,310 hp mainline compressor unit at the Wamsutter Compressor Station in Sweetwater County, Wyoming; (b) an approximately 5-mile, 24-inch 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 maintains that these modifications will provide additional flexibility to the receipt and delivery capability of the existing Rockies Express Certificated Facilities. 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, as discussed below.

13. 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). The proposed compression facilities at the Meeker and Cheyenne Hubs are necessary to allow certain gas volumes to enter the Rockies Express system. Rockies Express proposes to charge incremental rates to shippers utilizing such facilities. In order to minimize impacts on the environment and for efficiency of construction, Rockies Express

submits that these hub facilities will be constructed in conjunction with the impending construction of the Phase II compression facilities of the Rockies Express Certificated Facilities.

14. Rockies Express also proposes to install three new receipt meters: the Questar Interconnect at the Meeker Hub, the Echo Springs Interconnect, and the Wyoming Interstate Company, Ltd. Interconnect at the Cheyenne Hub. Rockies Express also proposes to install five delivery meter stations along the REX-West route, east of the Cheyenne Hub, at interconnection points with Kinder Morgan Interstate Gas Transmission LLC, Natural Gas Pipeline Company of America, Northern Natural Gas Company, ANR Pipeline Company, and PEPL.

15. Finally, Rockies Express states that it will install various appurtenant facilities under section 2.55(a) of the Commission's regulations including motor control centers, gas cooling equipment, pig launchers and receivers, approximately 41 mainline valves, regulators, fuel meters, the auxiliary facilities at each meter station and auxiliary equipment and plant yard piping related to the compressor station installations. According to Rockies Express, all of these facilities will be located within the pipeline corridor, compressor station sites, and meter station rights-of-way; and, as such, all have been, or will be, covered by the environmental surveys.

16. Rockies Express estimates that the construction costs for the Rex-West Project will be approximately $1.6 billion.

B. Capacity Lease with Overthrust

17. Rockies Express states that it originally considered building from Wamsutter, Wyoming west to the Opal Hub to allow producers delivering to the Opal Hub to access REX-West but determined it would be more cost effective and efficient to work with Overthrust through an enhancement of that pipeline's existing system. Thus, Rockies Express has entered into a Natural Gas Transportation Capacity Lease Agreement with Overthrust, for a term of twenty years, that provides that Rockies Express will acquire from Overthrust firm transportation capacity of 625,000 Dth/day with the right under certain conditions to increase the leased firm transportation capacity up to 1,500,000 Dth/day, from the Opal Hub to the Wamsutter Hub (Capacity Lease).[9] Rockies Express seeks certificate authorization to lease the capacity from Overthrust, and to treat the leased capacity as part of its system, subject to the terms and conditions of the proposed Rockies Express tariff.

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[9] A copy of the Capacity Lease is contained in Exhibit Z to the application.

18. In order to fulfill the firm capacity commitments in the Capacity Lease, Overthrust filed on July 19, 2006, in Docket No. CP06-423-000, an application under NGA section 7(c) seeking authority to construct and operate two compressor stations and 77 miles of 36-inch diameter pipeline that will interconnect with Rockies Express at Wamsutter.

19. Rockies Express claims that approval of the Capacity Lease is consistent with Commission policy. Specifically, Rockies Express maintains that the lease agreement maximizes the efficient use of existing facilities and avoids duplication of existing pipeline infrastructure facilities. Rocky Express also submits that the proposed incremental recourse reservation rate 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 that would be required if Rockies Express built a greenfield project that duplicated Overthrust's facilities.[10] Finally, Rockies Express maintains that existing Overthrust customers will not be adversely affected, as new incremental capacity will be added by Overthrust sufficient to perform under the Capacity Lease.

C. <u>Related TransColorado Certificate Application</u>

20. In a separate application filed on June 23, 2006, in Docket No. CP06-401-000, TransColorado seeks authority to expand its existing facilities to transport gas being produced in the San Juan Basin located in southern Colorado and northern New Mexico (Blanco-Meeker Expansion Project). Rockies Express states that the proposed facilities will permit TransColorado to transport up to 250,000 Dth/day of natural gas from the Blanco Hub area in San Juan County, New Mexico, to Rockies Express at an existing point of interconnection located at the Meeker Hub in Rio Blanco County, Colorado. As a result of the TransColorado expansion, and in conjunction with the construction of REX-West, Rockies Express states that shippers will be able to transport San Juan Basin reserves from the Blanco Hub to pipelines serving major markets in the midwestern United States, a new transportation route unavailable to shippers today.

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[10] Rockies Express has estimated that the average annual cost of service for it to construct and operate facilities comparable to the Overthrust Lease Facilities would be approximately $51,601,000. See Schedule 5, Exhibit N. *See* Schedule 5, page 2 of 6 on Exhibit N. The estimated recourse reservation rate on those facilities is $6.8803 per Dth of MDQ/month. *See* Schedule 5, page 1 of 1, of Exhibit P.

D. Open Season and Precedent Agreements

21. Rockies Express states it conducted an open season for REX-West from November 9 through December 19, 2005. Rockies Express states that the open season and subsequent negotiations provided interested parties the ability to make binding commitments for up to 2,000,000 Dth/day of firm transportation capacity on the REX-West Project and, if ultimately constructed, the REX-East Project as well.

22. Because of the magnitude of the Project and the consequent need to secure very large capacity commitments, Rockies Express states it designed its REX-West open season to provide incentives for shippers to make large, long-term firm transportation commitments to the Project. Thus, the open season offered greater benefits, in terms of transportation rates and other rate-related contractual benefits, to shippers based on the quantity of firm transportation commitment.[11] Rockies Express explains that it established three specific classes of shippers: Foundation Shippers, Anchor Shippers, and Standard Shippers based on awarded capacity. Rockies Express asserts that all potential shippers were provided an equal opportunity in the open season to obtain the benefits and rights of each shipper category.

23. Foundation Shippers receive the most beneficial negotiated reservation rates and contractual rights. This group includes shippers executing precedent agreements for long-term capacity commitments to REX-West and REX-East equal to, or exceeding, 500,000 Dth/day.[12] Foundation Shippers are granted most favored nation status with respect to their negotiated reservation rate, which is the lowest rate, and contractual rollover rights, renewable for one year terms, at the same rate and quantity (or any portion of that quantity) as set forth in their currently-effective FTSAs. Foundation Shippers also were granted a one-time Right of First Refusal (ROFR), to be effective after expiration of the initial term of their service agreements, which will be applicable to any portion of the quantity (but not at the rate) set forth in their initial FTSAs.

24. Anchor Shippers consist of shippers making long-term capacity commitments to both REX-West and REX-East by executing precedent agreements for firm transportation equal to or exceeding 200,000 Dth/day, but less than 500,000 Dth/day. Anchor Shippers

[11] Section 17 of the General Terms and Conditions (GT&C) of the pro forma tariff sets forth the contractual benefits that were granted to Foundation Shippers and Anchor Shippers.

[12] Rockies Express announced in the open season posting that one Foundation Shipper, Encana, had executed a binding commitment for 500,000 Dth/day prior to the commencement of the open season.

are afforded most favored nations rights with respect to the negotiated reservation rates afforded to all long-term firm shippers except Foundation Shippers, as well as annual contractual rollover rights and ROFR identical to those afforded to Foundation Shippers.

25. The third classification, Standard Shippers, consists of shippers entering into precedent agreements on both Rex-West and Rex-East for firm transportation commitments less than 200,000 Dth/day. Standard Shippers are afforded contractual rollover and ROFR rights, as may be applicable, under the proposed Rockies Express tariff. [13]

26. Upon conclusion of the open season, Rockies Express states that it had secured firm transportation commitments of 1,300,000 Dth/day from nine shippers. In order to obtain additional commitments that Rockies Express believed were necessary to fully develop an economically viable project, further negotiations were conducted that resulted in the execution of binding precedent agreements from a total of ten shippers for initial firm transportation capacity on REX-West totaling 1,600,000 Dth/day and totaling 1,800,000 Dth/day when, and if, REX-East is authorized, constructed, and put into service. However, because Rockies Express proposes to construct REX-West with an initial start-up capacity of 1,500,000 Dth/day, Rockies Express states that four of the shippers agreed to voluntarily reduce their MDQ for the period of service associated with the REX-West Project.[14] Subsequently, one of these shippers, Wyoming Pipeline Authority (WPA), who bid for and received 200,000 Dth/day in the open season and thus qualified as an Anchor Shipper, was ultimately not able to meet the creditworthiness provisions of the open season.[15] All but 12,000 Dth/day of WPA's capacity was assigned

[13] Section 17.2 of the GT&C provides any shipper under a FTSA with a term of three years or longer the right to rollover the agreement for a term of three-years or greater, but discount or negotiated rates do not apply to the rollover agreement unless agreed to by Rockies Express. Section 17.3 provides a ROFR to shippers under a contract with a term equal to or greater than 12 months, or under multi-year seasonal contracts, and paying the maximum rate unless otherwise agreed by Rockies Express.

[14] Exhibit I, as supplemented on July 28, 2006, contains a copy of each of the executed precedent agreements. Rockies Express requests confidential treatment of the precedent agreements contained in Exhibit I pursuant to section 388.112 of the Commission's Rules of Practice and Procedure.

[15] The WPA is an agency authorized by statute in the State of Wyoming to promote the construction of new infrastructure necessary to move the State's natural resources. The WPA terminated its precedent agreement effective June 16, 2006.

to other shippers.[16] The table in Appendix A to this order lists the shippers with binding precedent agreements, their respective subscribed capacities on REX-West, and the terms of their capacity commitments. The four shippers that agreed upon MDQ reductions are also reflected on the table. Because the MDQ reduction was at the request of Rockies Express, Rockies Express afforded each shipper the right to retain its status based on the awarded, contracted capacity, not the shipper's final MDQ after reduction.

E. Recourse Rates and Tariffs

27. Rockies Express submits a pro forma tariff in Exhibit P[17] and requests it be treated as a replacement tariff and supersede, on the in-service date of REX-West, in its entirety, the then-effective version of the Rockies Express tariff. Rockies Express proposes recourse rates designed using the Commission approved Straight Fixed Variable methodology (SFV) and proposes to establish two rate zones (Zone 1 and Zone 2). Zone 1 will encompass all points west of, and including, the Cheyenne Hub and will consist of Rockies Express' currently approved rates which Rockies Express does not propose to change. Zone 2, for which Rockies Express proposes new initial rates, will encompass all points east of the Cheyenne Hub to, and including, the interconnect with PEPL.

28. Rockies Express also proposes 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 also requests a predetermination that it can roll-in the costs of the Wamsutter compression and the Echo Springs compression and supply lateral facilities into its Zone 1 rates. In addition, Rockies Express proposes to include in the Zone 1 commodity rates and Zone 1 mainline Fuel and Lost and Unaccounted for charges (FL&U) any commodity or FL&U charges associated with using the Overthrust Lease Facilities.

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[16] *See* July 28, 2006 supplemental filing at 2. Pursuant to the assignment provisions in the precedent agreements, the assignees will receive the ROFR and rollover rights granted to WPA, but will pay the same rates as other Standard Shippers.

[17] Rockies Express Pipeline LLC, FERC Gas Tariff, Second Revised Vol. No. 1.

III. Notice, Interventions, Comments, and Protests

29. Notice of Rockies Express' application was published in the *Federal Register* on June 21, 2006 (71 Fed. Reg. 35,641-42). A number of timely unopposed interventions were filed.[18] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[19]

30. Consolidated Edison Company of New York, Inc. (Con Ed), ConocoPhillips and Southern Star Central Gas Pipeline, Inc. (Southern Star) filed late motions to intervene. The Commission finds that granting these late-filed motions 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 motions to intervene.[20]

31. Comments in support of REX-West were filed by Encana, Overthrust, ConocoPhillips, and the WPA. Ultra Resources (Ultra), BP America Production Company and BP Energy Company (BP), and Yates Petroleum Corporation (Yates) also filed in support of the Project but raised concerns regarding certain tariff provisions proposed by Rockies Express.

32. On August 9, 2006, Rockies Express filed an answer to the comments of Ultra, Yates, and BP. Rockies Express states that it has resolved all issues raised by Yates and Ultra, and all issues raised by BP except for an issue regarding reservation charge credits. Rockies Express has attached revised pro forma tariff sheets that reflect the resolution of the various issues raise by the parties. On August 9, 2006, Ultra filed to withdraw its comments. On August 17, 2006, BP filed to partially withdraw its protest and filed an answer addressing the reservation charge credit issue. Although the Commission's Rules of Practice and Procedure do not permit answers to answers, the Commission finds good cause to waive Rule 213(a) to admit the answers of Rockies Express and BP because they assist the Commission in resolving the issues in the proceeding.[21] The outstanding issue raised by BP regarding reservation charge credits will be addressed below.

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[18] The parties filing timely motions to intervene are listed in Appendix B to this order.

[19] 18 C.F.R. § 385.214 (2006).

[20] S*ee* 18 C.F.R. § 385.214(d) (2006).

[21] 18 C.F.R. § 385.213(a)(2) (2006).

33. The Kansas Corporation Commission and the Kansas Landowners filed comments regarding environmental issues which will be addressed in a subsequent order when the environmental review and analysis are complete.

IV. Discussion

34. Since Rockies Express proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Rockies Express' proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

35. 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.[22] 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.

36. 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.

[22] *Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC ¶ 61,277 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

37. Rockies Express' proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Rockies Express is proposing to recover the majority of the costs of the Project through a new zoned rate (Zone 2) as well as incremental charges to recover the costs of certain new hub facilities it is constructing, as well as the lease of capacity from Overthrust. In addition, as discussed below, we are approving Rockies Express' request for a predetermination that it can roll-in the costs of the additional compression at Wamsutter and the Echo Springs supply lateral and associated compression into its Zone 1 rates. Encana, the only existing shipper on Rockies Express, has committed to replace its capacity on the Rockies Express Certificated Facilities with capacity on Rockies Express' system as reconfigured by the REX-West project, and supports the application. Under its precedent agreement, Encana will pay a lower negotiated rate than any other shipper and will have the right to rollover its agreement at the same rate because of its capacity commitment as a Foundation Shipper.

38. The Project will not adversely affect Rockies Express' existing customer, or other pipelines and their customers. The proposed facilities are designed to extend the Rockies Express system without degradation of service to Rockies Express' existing firm customer, Encana. In fact, the REX-West facilities will enhance the transportation options of Encana. Further, REX-West is designed as a supply access project that will provide transportation capacity to enable growing volumes of Rocky Mountain gas production to reach midwest markets.[23] Thus, there is no evidence that service on other pipelines will be displaced or bypassed and no pipeline companies have objected to the Project. Moreover, the new pipeline will benefit interconnecting pipelines by providing new sources of gas for them to transport. We conclude that Rockies Express' proposal will not have adverse impacts on existing pipelines or their captive customers.

39. Rockies Express states that the REX-West project will require permanent easements for 4,351 acres, and that it has obtained easements for approximately thirty percent of the pipeline right-of-way.[24] Rockies Express also states that it expects a successful resolution of its negotiations with almost all of the landowners, and does not anticipate any significant need to use condemnation procedures. The majority of the

[23] In Exhibit H of the application, Rockies Express provides the results of a study done in mid-2005 by Kinder Morgan that projects an increase in gas supply of approximately 2 Bcf/day by the year 2008, with an additional 2 Bcf/day of incremental production by the year 2016, from the Rocky Mountain region.

[24] *See* Rockies Express' August 23, 2006, data response (August 23 data response) to staff data request number 6.

proposed REX-West Project route will parallel existing pipeline right-of-way, and, as noted above, the Capacity Lease with Overthrust eliminates the need for Rockies Express to construct a greenfield pipeline, thereby avoiding additional adverse environmental effects. We find that the effect of Rockies Express' proposed project on landowners and communities will be minimized. Any environmental concerns and comments will be addressed in a subsequent order when the environmental review and analysis are complete.

40. Rockies Express has entered into long-term precedent agreements for almost 100 percent of the design capacity of the Project. In addition, the Project will benefit consumers across the nation by providing access to new, competitive supplies of domestic natural gas. There is a need for increased pipeline capacity to access gas supplies produced in the Rocky Mountain region and REX-West is designed to meet that need.

41. Based on the benefits that REX-West will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we make a preliminary determination, subject to completion of our environmental review, that approval of the REX-West project is required by the pubic convenience and necessity.

B. Rates

1. Recourse Rates

42. Rockies Express proposes to offer cost-based firm (Rate Schedule FTS) and interruptible (Rate Schedule ITS and PALS) open access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.[25] Rockies Express proposes zoned rates (Zone 1 and 2) and incremental charges which it states were developed consistent with the Commission's policy related to the SFV rate design. Rockies Express proposes to use its existing firm and interruptible recourse rates for the Rockies Express Certificated Facilities as the Zone 1 rates for REX-West. Rockies Express also proposes to establish its initial rates for transportation of gas through Zone 2 of REX-West. Finally, Rockies Express is also proposing initial incremental charges to reflect costs associated with the addition of the Meeker Hub Facilities, the Cheyenne Hub Facilities, and the Overthrust Lease Facilities.

[25] *See* Rockies Express Pipeline LLC, FERC Gas Tariff, Pro Forma Second Revised Volume No. 1.

43. Rockies Express is proposing two-part recourse rates for firm transportation service based on the applicable cost of service associated with its Zone 2 and incremental facilities. Rockies Express also is proposing one-part rates for interruptible transportation service based on a 100 percent load factor derivative of the firm transportation rate. The Rate Schedule PALS rates were designed and developed as derivative rates of the interruptible rates, consistent with the method used to derive such rates included in the currently effective Rockies Express tariff.

44. In developing the proposed recourse rates for the new REX-West facilities, Rockies Express has utilized a capital structure of 55 percent equity and 45 percent debt with a 13 percent return on equity and a 6.75 percent cost of debt, resulting in an overall rate of return of 10.19 percent. Rockies Express asserts that the proposed 13 percent return on equity is reasonable considering the higher risk attendant with a pipeline project of this size and is consistent with the allowed rates of return on equity that the Commission has granted in major construction projects for other pipelines with similar capital structures.[26] Rockies Express proposes to depreciate its new gas transmission plant using a 2.86 percent straight-line depreciation rate based on a 35-year useful life. Rockies Express states that the 35-year useful life, and corresponding 2.86 percent depreciation rate, is identical to that approved by the Commission for the Rockies Express Certificated Facilities and is consistent with the Commission's determination in *Williston Basin Interstate Pipeline Company*.[27]

45. Finally, Rockies Express proposes three separate trackers for the recovery of FL&U associated with the use of specified facilities. The three components that will be tracked under separate charges are as follows: (1) FL&U associated with the Overthrust Lease Facilities included as part of Zone 1 and other Zone 1 and Zone 2 FL&U (mainline fuel tracker), (2) FL&U associated with the Cheyenne Hub Facilities, and (3) FL&U associated with the Meeker Hub Facilities.

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[26] *Citing Cheniere Corpus Christi Pipeline Co.*, 111 FERC ¶ 61,081 (2005) (order approving initial rates reflecting 14 percent rate of return on equity); *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257 (2006) (order approving initial rates reflecting 13 percent rate of return on equity).

[27] *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 at P 54 (2003), *order on reh'g*, 107 FERC ¶ 61,164 at P 27 (2004) (finding that the useful life of facilities dependent upon Northern Rockies Mountain and Western Canadian Sedimentary Basin gas was 35 years).

46. Rockies Express states that inclusion, in the Zone 1 tracker, of FL&U associated with the Overthrust Lease Facilities is appropriate as Zone 1 transportation capacity is designed to receive gas from Overthrust at high pressure.[28] Absent the compression provided by Overthrust, Rockies Express states that it would need to construct similar compression on its system. Further, Rockies Express states that all shippers benefit from a reduction in variable costs, including fuel costs, due to the reduced need for compression on its system made possible by the use of the Overthrust Lease Facilities. Rockies Express concludes that, in light of the significant benefits that the project provides to consumers and the carefully crafted transportation contracts that underpin the economic basis for the project, this cost allocation process is in the public interest.

47. The Commission has reviewed Rockies Express' proposed cost-of service, allocation and rate design for its initial recourse rates including its proposed overall rate of return of 10.19 and depreciation rate of 2.86 percent and finds they reasonably reflect current Commission policy. Further, no party has raised any issues associated with Rocky Express' proposed recourse rates. Accordingly, we will approve the proposed initial recourse rates for the REX-West project.

48. Regarding the proposed incremental rates for the Meeker and Cheyenne Hub services, Rockies Express must maintain its records for the facilities in a manner to comply with the requirements of section 154.309 of the Commission's regulations. Additionally, we will condition the level of the incremental rate for the Capacity Lease with Overthrust on the outcome of the proceeding in Docket No. CP06-423-000.

2. <u>Interruptible Services Revenue Crediting</u>

49. The currently effective Rockies Express tariff provides for IT revenue sharing for the existing Rockies Express Certificated Facilities, which will make up much of Zone 1 on REX-West.[29] In this proceeding, Rockies Express states it proposes to allocate a significant level of costs to interruptible service in the calculation of the proposed Zone 2 recourse rates for REX-West. Based on the proposed allocation of costs to IT service and in recognition of the fact that it is not proposing in this application to adjust the recourse

[28] *See* August 23 data response number 4.

[29] *See* section 20.4 of the GT&C of the currently effective Rockies Express FERC Gas Tariff.

rates applicable to Zone 1 to include the cost for the additional Zone 1 facilities, Rockies Express proposes to eliminate the IT revenue sharing mechanism from the currently-effective tariff.

50. The Commission's policy regarding interruptible services requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.[30] Since Rockies Express has not allocated any costs to interruptible services in the calculation of its Zone 1 rates, we find that its proposal to eliminate the existing IT revenue sharing mechanism for Zone 1 is not supported. Rockies Express is therefore directed to retain its IT revenue sharing mechanism for Zone 1 and must revise its tariff accordingly.

3. Request for Predetermination of Rolled-in Rate Treatment

51. As noted above, Rockies Express proposes to adopt its approved firm and interruptible recourse rates for its Rockies Express Certificated Facilities as the Zone 1 rates in this proceeding. However, Rockies Express seeks a predetermination of rolled-in rate treatment for costs of the additional Zone 1 facilities it proposes to construct in this certificate proceeding. Specifically, Rockies Express seeks a predetermination that it can roll-in the costs of the additional compression at Wamsutter, Wyoming and the Echo Spring supply lateral and associated compression into its Zone 1 rates in its next section 4 rate proceeding. Rockies Express estimates the first year costs-of-service for the Wamsutter and Echo Springs facilities are approximately $2.2 million and $4.43 million, respectively.[31]

52. Rockies Express' August 23 data response addresses, among other things, its request for a predetermination of rolled-in treatment.[32] Rockies Express states that the proposed additional Wamsutter compression is necessary to allow the capacity commitments of REX-West shippers to be efficiently transported across the system and to provide the capability to receive the additional volumes from Overthrust. Rockies Express contends that the addition of 10,310 hp at Wamsutter replaces 22,300 hp at its certificated Big Hole Compressor Station, thus reducing the associated annual cost of service from $3.8 million to $2.15 million, and lowering the environmental impact. Rockies Express states that the Echo Springs supply lateral and compression facilities allow BP to transport 100,000 Dth/day of natural gas from an additional supply source

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[30] *See Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 51 (2005).

[31] *See* Exhibit N, Schedules 6 and 7.

[32] *See* August 23 data response number 3.

and formed the basis of BP's total commitment of 300,000 Dth/day on the REX-West and REX-East Project. Rockies Express maintains that this commitment of BP underpins the economic rationale for the construction of the REX-West Project. In addition, Rockies Express claims that the Echo Springs' facilities benefit all shippers because these facilities attach an important supply area to which all shippers have access. Finally, Rockies Express states that the compression at Wamsutter and at Echo Springs will favorably affect the overall fuel efficiency for Zone 1 transportation.

53. We will grant Rockies Express' request for a predetermination that the costs of the Wamsutter and Echo Springs facilities may be rolled into its Zone 1 rates absent a significant change of circumstances. As discussed above, the Rockies Express Certificated Facilities are still under construction and their design has been amended to accommodate customer demand associated with the REX-West project. The new facilities for which rolled-in-treatment treatment is sought are located in the new Zone 1 of the reconfigured Rockies Express system and will serve to optimize the reliability and efficiency of the system in addition to providing increased flexibility for shippers to access new gas supplies. The Policy Statement permits these types of facilities to be rolled-in.[33] We also note that no shipper has objected to the roll-in proposal.

4. Rate Review

54. Rockies Express is already required to file a cost and revenue study at the end of its first three years of operation including both Phase I and Phase II facilities.[34] Since it is expected that the REX-West facilities will be placed in service close in time to the Phase II facilities and because Rockies Express' operations will change substantially with the addition of he REX-West facilities, we find that it is appropriate to require the inclusion of REX-West operations in the cost and revenue study to be filed by Rockies Express. Accordingly, we revise our previous requirement to file a cost and revenue study that includes only Phase I and Phase II and instead require Rockies Express to file a cost and revenue study at the end of its first three years of actual operation that includes both Phases I and II and REX-West, to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Rockies Express' approved initial recourse rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost-of-service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable

[33] *See* Policy Statement, 88 FERC ¶ 61,227 at 61,726, fn. 12.

[34] *Entrega*, 112 FERC ¶ 61,177 (2005), Ordering Paragraph C.

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.

C. The Rockies Express Tariff

55. Rockies Express proposes that on the in-service date of REX-West, the pro forma tariff filed in Exhibit P be treated as a replacement tariff and supersede, in its entirety, the then-effective version of the Rockies Express tariff. Once the pro forma replacement tariff is approved by the Commission in this proceeding, Rockies Express states it will file the replacement tariff not less than 30 days and not more than 60 days prior to commencement of service on the expanded REX-West system.

56. Rockies Express proposes to continue to offer the same firm and interruptible transportation services (Rate Schedules FTS, ITS, and PALS) that it currently provides through the Rockies Express Certificated Facilities. Rockies Express explains that the pro forma replacement tariff contains certain modifications and additional provisions that have been designed to reflect the expanded system and to accommodate specific issues that various shippers raised during the Project's development. Rockies Express states that these changes include changes to the GT&C in the pro forma replacement tariff to include certain rights that were granted to the Foundation Shippers and the Anchor Shippers.

57. We find that Rockies Express' pro forma replacement tariff, as modified in its August 9 answer, generally complies with Part 284 of the Commission regulations and current Commission policy with the exceptions discussed below. The Commission will require Rockies Express to file actual tariff sheets consistent with the directives in this order at least 30 days and no more than 60 days prior to the commencement of service.

1. Scheduling and Curtailment Priorities

58. Section 3.1 of the GT&C states general scheduling principles under which quantities are to be scheduled in the following order: firm service at primary points and primary paths, firm service at secondary points, quantities required for system requirements, and interruptible service, authorized overrun service, and Park and Loan service. In its August 9 answer Rockies Express proposes to add a provision in section 3.5 that provides that curtailment priorities shall be applied to services in the reverse order of the scheduling priorities described in section 3.1.

59. We find that section 3.5 is contrary to current Commission policy which requires that once scheduled, all firm service is assigned the same priority for curtailment

purposes, irrespective of whether capacity is utilized on a primary or secondary basis.[35] Rockies Express is directed to modify section 3.5 to be consistent with Commission policy.

2. Reservation Charge Credits

60. Section 7.14C of the GT&C provides that in non-force majeure situations, Rockies Express will provide reservation charge credits as follows:

> Except as provided in Section 7.14D below, in the event Transporter fails to confirm Nominations on any Day under any firm contract equal to at least 98% of Shipper's Firm Daily Quantity for that Day, then the applicable Reservation Charges shall be eliminated for the quantity of Gas nominated but not scheduled for delivery by Transporter at Primary Points within the Shipper's Firm Daily Quantity under the contract; provided, however, that these charges shall not be eliminated to the extent Shipper uses Secondary Point service.

61. BP asserts that by requiring a credit only if Rockies Express delivers less than 98 percent of a firm shipper's nominations, Rockies Express is seeking an unjustified two percent safe harbor. BP claims that most pipelines do not have such a curtailment credit safe harbor. It also claims that such a safe harbor contravenes the Commission findings that it would be inequitable to allow a pipeline to collect reservation charge revenue associated with periods when the pipeline cannot satisfy its duty to provide firm service, unless the disruption is due to force majeure or unscheduled maintenance.[36] Additionally, BP claims that a full reservation charge credit applies with special force on Rockies Express because the Rockies Express reservation rate is steep, *i.e.*, 79 cents per Dth. Thus, according to BP, the proposed 2 percent safe harbor would mean that a 100,000 Dth/day recourse rate shipper would be paying Rockies Express $1,500 each day for service that the pipeline is not providing.

62. In its August 9 answer, Rockies Express states that its tariff provision is consistent with the Commission's ruling in *Tennessee Gas Pipeline Company* (*Tennessee*), where

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[35] Order No. 636-B, 61 FERC ¶ 61,272 at 62,013 (1992).

[36] *Citing Entrega Pipeline Co.*, 112 FERC ¶ 61,177 at P 58, *order on reh'g*, 113 FERC ¶ 61,327 (2005).

the Commission accepted the pipeline's proposal to provide reservation credits when a pipeline fails to deliver at least 98 percent of a shipper's scheduled deliveries in non-force majeure situations.[37]

63. The Commission's policy regarding reservation charge adjustments is that where scheduled gas is not delivered due to a non-force majeure or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control.[38] We agree with BP that Rockies Express' proposal not to provide reservation charge credits when it schedules at least 98 percent of a shipper's nominations in non-force majeure situations does not adequately comply with Commission policy. We acknowledge that we accepted a similar proposal in *Tennessee*, but in that case the Commission did not specifically address the merits of that provision. Upon consideration here, we find that Rockies Express' proposal is unjust and unreasonable because it requires its customers to bear the risk associated with interruption of service within the pipeline's control. Rockies Express is directed to make revisions consistent with this ruling.

3. Gas Quality

64. In its application, Rockies Express states that the proposed changes to section 20.2 of the GT&C concerning the gas quality specifications for water content and hydrocarbon dewpoint are less strict than the currently effective tariff standards. Rockies Express points out that the changes are a result of discussions with shippers and in consideration of both upstream and downstream pipeline gas quality standards. In its July 5, 2006, intervention, Yates notes that Rockies Express' gas quality standards, even with the proposed changes, remain more restrictive than in WIC's tariff. However, after discussion with WIC and Rockies Express, Yates expects that natural gas tendered to the Rockies Express receipt point at Cheyenne Hub for its account will be accepted due to the availability of blending on the Rockies Express pipeline system.

65. In its August 9 answer, Rockies Express states that after discussions with Yates and other shippers, it proposes 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

[37] *Tennessee*, 76 FERC ¶ 61,022 (1996), *order on reh'g*, 80 FERC ¶ 61,070 (1997).

[38] *See El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003); *Tennessee*, 76 FERC ¶ 61,022 (1996), *order on reh'g*, 80 FERC ¶ 61,070 (1997).

concludes, “Transporter 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.” Rockies Express claims the proposed provision is justified so that the original shippers, who have supported the project, are not penalized if new and different quality gas volumes are tendered by subsequent shippers. Rockies Express concludes that its efforts comply with Commission’s Policy Statement on Natural Gas Quality and Interchangeability[39] wherein the Commission encourages shippers and transporting pipelines to resolve gas quality issues on their own.

66. We recognize that Rockies Express has worked with its shippers to resolve gas quality and interchangeability issues and to optimize the blending capability of its system in order to accept gas that does not meet the gas quality provisions of its tariff. However, Commission policy on non-discriminatory access requires Rockies Express to treat similarly situated shippers in a not unduly discriminatory manner. In the Policy Statement on Natural Gas Quality and Interchangeability, we stated that given the complexity of operating an interstate pipeline, there is substantial discretion given to a pipeline to allow it to maximize the gas supply available to its customers while maintaining its ability to manage gas quality and interchangeability within acceptable limits. For example, we noted that operational constraints in particular parts of a pipeline’s system may justify treating shippers on those parts of the system differently from shippers on other parts of the system.[40]

67. Here, however, Rockies Express proposes to accept gas from an original firm shipper that does not meet the tariff’s gas quality provisions while rejecting gas of a similar quality from a firm shipper who contracted for firm service after the in service date of REX-West. This proposed tariff provision would grant some firm shippers service superior to, and potentially at the expense of, other firm shippers. We find that this proposal has not been justified and is 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. Therefore, the Commission will require Rockies Express to revise section 20 of its tariff, so that all shippers on the system will be treated in a non-discriminatory manner.

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[39] *See* 115 FERC ¶ 61,325 (2006).

[40] *Id.* at 39-40.

D. Open Season and Precedent Agreements

68. All firm shippers executing precedent agreements for service on REX-West have elected to pay negotiated reservation rates.[41] As described above, the negotiated rate and other contractual terms are dependent on whether the shipper qualifies as a Foundation Shipper, Anchor Shipper, or Standard Shipper. Rockies Express seeks 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. While the Commission usually does not review negotiated rate agreements in the context of a certificate application, we will do so here given the size of the Project and the associated financial commitments required.

1. Conduct of Open Season and Negotiated Rate/Contractual Agreements

69. Rockies Express requests that the Commission find that the conduct of its open season and the services and rates offered to prospective shippers meet the requirements of the NGA. Rockies Express submits that all potential shippers on REX-West were provided equal and adequate notice of the different negotiated reservation rate options available on the project and had an equal opportunity to bid for capacity on the Project. In addition, Rockies Express maintains that all shippers were afforded the Commission-required option of electing to pay the applicable recourse rates to be established in the certificate proceeding. To secure adequate support for the Project, Rockies Express states that it was required to make these accommodations to prospective large shippers and it endeavored to make those accommodations in a non-discriminatory and transparent manner. Moreover, Rocky Express maintains that those shippers that were able to make large capacity commitments to the Project (Foundation Shippers and Anchor Shippers) were provided with benefits commensurate with their large commitments, which made possible the development of a project of this size. Likewise, Rockies Express submits that smaller shippers were provided with the opportunity to subscribe to capacity on the Project without being required to over-extend their capacity commitments and thus received the benefits of the overall economies of scale that the Project offered as a result of the Foundation Shipper and Anchor Shipper commitments.

70. Rockies Express also states it is not aware of any shipper or potential shipper who disagreed with either the conduct of the open season or the subsequent negotiations process, nor is it aware of complaints concerning the three categories of shippers and the attendant negotiated rates and related provisions.

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[41] Section 33 of the GT&C of the pro forma replacement tariff sets forth Rockies Express' negotiated rate authority under which these elections were made.

71. Under the Commission’s policies, all new interstate pipeline construction must be preceded by a nondiscriminatory, nonpreferential, open-season process through which potential shippers may seek and obtain firm capacity rights. Second, as part of the open season, the project sponsor must offer a maximum recourse rate so that the bidder in the open season may have the option to choose between the recourse rate and a negotiated rate.[42] Rockies Express has fully explained how its open season for this Project met these requirements and no party has challenged those statements. Thus, we find that the conduct of the open season was consistent with the Commission’s open-season policies.

72. We will also approve Rockies Express’ rate and contractual offerings that are based on a shipper’s status as a Foundation Shipper, Anchor Shipper, or Standard Shipper. Under the Commission’s negotiated rate program, a pipeline is permitted to negotiate individual rates for particular customers as long as they do so in a not unduly discriminatory manner.[43] Recently, the Commission clarified that its existing negotiated rates and discount policies permit, under certain circumstances, project sponsors to provide rate incentives to shippers on a number of grounds, including volumes to be transported, without constituting undue discrimination.[44] The Commission stated it would review different rate incentives on a case-by-case basis and observed that the risk of undue discrimination would be reduced to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers.[45]

73. Here, Rockies Express has explained that it offered rates and contractual incentives to secure adequate support for the project. Rockies Express held a transparent open season where the rate and contractual incentives offered were clearly defined. Qualification for these incentives was based on a shipper’s commitment to the Project which was set forth in each shipper’s executed precedent agreement and therefore publicly verifiable. Additionally, all potential shippers had an opportunity to become

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[42] *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,125 (2002).

[43] *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 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066 (1996).

[44] *Revisions to Blanket Certificate Regulations and Clarification Regarding Rates*, FERC Stats. & Regs. ¶ 32,606 at P 93-107 (2006) (order proposing to amend blanket certificate regulations and clarifying rates).

[45] *Id.* at P 102.

Foundation Shippers or Anchor Shippers. Under these circumstances, we find that the negotiated rates and contractual terms offered to Foundation Shippers and Anchor Shippers are not unduly discriminatory.

2. **Non-Conforming Provisions**

74. Rockies Express states that certain of the precedent agreements signed by shippers in the open season contain provisions which address unique circumstances of the shipper that, but for the particular provision, would not provide the shipper with the contractual incentive necessary for it to make a binding commitment to the Project. Rockies Express submits that in each of these situations, no other shipper is similarly situated to the shipper that executed the precedent agreement. Rockies Express believes that due to the circumstances that give rise to these provisions, none of the contract provisions affect the quality of service to be received by that shipper or any other shipper. Rockies Express seeks a preliminary determination from the Commission that although each identified contract provision may constitute a material deviation from the form of service agreement, none of them is unduly discriminatory. Consistent with current Commission policy, Rockies Express states it will file the negotiated rate agreements, identifying any material deviations or non-conforming provisions in each agreement, at the time specified in the regulations or in a Commission order in this proceeding. Rockies Express describes the non-conforming provision as follows.

Minerals Management Service

75. Rockies Express states that the precedent agreement with the U.S. Minerals Management Service of the Department of Interior (MMS) includes certain rate and termination provisions that Rockies Express asserts are necessary in order to permit MMS to implement the specific statutory requirements governing its Royalty in Kind (RIK) program[46] Specifically, if MMS is required by legislative action or by a change in federal or state policy to discontinue taking gas in kind or is no longer authorized to hold long-term transportation capacity and is thereby unable to meet the MDQ obligation in its service agreement, MMS has the right to terminate its FTSA on 30 days' written notice. In addition, in the event MMS receives RIK gas from a well in which it has in-kind royalty rights from an Anchor or Foundation Shipper and that gas otherwise would have

[46] 42 U.S.C.A. § 15902(d) (Pamphlet 3A December 2005) ("The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in value.").

been transported under the Anchor or Foundation Shipper's FTSA, then MMS shall receive the same rate for such RIK volumes as the corresponding Anchor or Foundation Shipper.[47]

76. MMS also has the right, subject to capacity availability, to increase its MDQ by 100,000 Dth/day at its negotiated reservation rate as the planned expansion of the RIK program materializes. MMS is obligated to use reasonable efforts to satisfy the increased MDQ by taking gas from sources that otherwise would not have been transported on the Project.

BP Energy Company

77. Rockies Express states that BP Energy Company (BP Energy) originally committed to 100,000 Dth/day of firm capacity. However because Rockies Express was aware of a significant producer with production who sought capacity but could not currently satisfy the credit requirements, BP Energy and Rockies Express worked with the producer to secure commitment of its gas to the Project by agreeing that BP Energy will increase its initial 100,000 Dth/day commitment up to 300,000 Dth/day of firm capacity as of the date of in-service of REX-East and the consequent increase in REX-West's capacity. To allow receipt of BP Energy's initial 100,000 Dth/day commitment, Rockies Express agreed to establish a primary receipt point and install the Echo Springs Compressor Station and Echo Springs supply lateral connecting the Wamsutter Field, where BP Energy is a major producer. In return for BP Energy's committing to step-up its capacity, if and when REX-East is put in service, Rockies Express agreed that as of the in-service date of REX-West, BP Energy would have the right to the Anchor Shipper rate, most favored nations rate treatment at the Anchor Shipper rate, annual contract rollover right, and a one-time contractual ROFR. Rockies Express claims that BP Energy was one of the few prospective shippers capable of taking on this additional risk of purchasing the production. By BP Energy agreeing to take on this risk, Rockies Express states that it reached commitments to justify construction of the most efficient design thereby benefiting all of the shippers.

78. We will approve the non-conforming provisions contained in the precedent agreements with MMS and BP Energy. We have accepted deviations from the pipeline's form of service agreement that reflect the unique circumstance involved with the construction of new infrastructure and provide the needed security to ensure that the

[47] Inclusion of this provision relating to RIK gas produced by a Foundation or Anchor Shipper in order to accommodate MMS' statutory obligations shall not, however, trigger the most favored nation clauses of any other shipper to claim a similar rate.

project gets built.[48] Here, Rockies Express has adequately supported the need for each of these provisions to secure the necessary financial commitments for construction of the most efficient pipeline project. In addition, we find that each of these provisions was tailored to address the unique circumstance of the respective shipper. In these circumstances, we find that these non-conforming provisions do not present a risk of undue discrimination. However, Rockies Express must still file, at least 30 days before the in-service date of the proposed facilities, an executed copy of the firm service agreement with the MMS and BP Energy and a tariff sheet identifying these agreements as non-conforming agreements as it has agreed to do.

79. The Commission received and made a part of the record in this proceeding all filed evidence, including the application and exhibits thereto, and after consideration thereof,

The Commission orders:

(A) A preliminary determination is made that the issuance of a certificate to Rockies Express under section 7(c) of the NGA to construct and operate certain facilities, and enter into a lease of capacity with Overthrust, as described and conditioned in this order and in the application, would on the basis of all pertinent non-environmental issues, be required by the public convenience a necessity.

(B) The preliminary determination made on Ordering Paragraph (A) contemplates issuance, after completion of a pending review of all environmental matters, of a final order by the Commission determining the proposal is required by the public convenience and necessity, in accordance with the National Environmental Policy Act and NGA section 7(c).

(C) Any certificate, authority, or approval issued in a final order in this proceeding will be conditioned on:

(1) Rockies Express' constructing and making available for service the facilities described herein, pursuant to section 157.20(b) of the Commission's regulations, within one year of the issuance of the final order in this proceedings;

(2) Rockies Express' 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;

[48] *CenterPoint Energy Gas Transmission Co.*, 102 FERC ¶ 61,222 (2003).

(3) Rockies Express' execution of firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction; and

(4) Commission authorization of Overthrust's proposed expansion and lease of capacity to Rockies Express in Docket No. CP06-423-000.

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

(E) Within three years after its in-service date, as discussed herein, 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 3 years after the in-service date for its proposed facilities.

(F) 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.

(G) Rockies Express must file, no less than 30 days, or more that 60 days, prior to commencing service, actual tariff sheets consistent with its pro forma tariff sheets filed in this proceeding as amended in its August 9 answer.

(H) The late motions to intervene filed by Con Ed, ConocoPhillips, and Southern Star are granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Precedent Agreements

Name of Shipper	Contracted Amount (Dth/day)	Length of Contract (Years)	MDQ Reduction	Final REX-West MDQ
Foundation Shipper:				
EnCana Marketing (USA) Inc.	500,000	10	64,000	436,000
Anchor Shippers:				
ConocoPhillips Company	400,000	10	0	400,000
Sempra Rockies Marketing, LLC	200,000	10	26,000	174,000
Ultra Resources, Inc.	200,000	10	0	200,000
BP Energy Company *.	100,000	10	0	100,000
Standard Shippers:				
Yates Petroleum Corporation (long haul) (short haul –Zone 2)	15,000 28,000	10 10	6,000 0	9,000 28,000
U.S. Minerals Management Service	50,000	10	0	50,000
Bill Barrett Corporation	25,000	10	0	25,000
EOG Resources, Inc.	50,000	10	0	50,000
Berry Petroleum Company	10,000	10	0	10,000
Arrowhead Resources L.P.	10,000	10	0	10,000
Coral Energy Resources L.P. (short haul – Zone 1)	28,000	10	0	28,000
Available Capacity	12,000		4,000	8,000
TOTAL	1,600,000		100,000	1,500,000

* BP Energy Company's commitment will increase to 300,000 Dth/day on the in-service date of REX-East.

Appendix B

List of Parties Filing Timely Interventions

ANR Pipeline Company
BP America Production Company and BP Energy Company
Cheyenne Plains Gas Company, L.L.C.
City of Hamilton, Ohio
Colorado Interstate Gas Company
Dominion Transmission, Inc.
Encana Corporation
Kansas Corporation Commission
Kansas Landowners
Kern River Gas Transmission Company
Mineral Management Service
Missouri Gas Energy, a Division of Southern Union Company
Northern Natural Gas Company
Panhandle Eastern Pipe Line Company, LP
PSEG Energy Resources & Trade LLC
Questar Overthrust Pipeline Company
Questar Pipeline Company
Ultra Resources, Inc.
Western Gas Resources, Inc.
Wyoming Interstate Company, Ltd
Wyoming Pipeline Authority
Yates Petroleum Corporation