

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Williston Basin Interstate Pipeline Company                      Docket Nos. CP02-37-000  
CP02-37-002  
CP02-37-003

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued June 2, 2003)

1. On November 30, 2001, in Docket No. CP02-37-000, Williston Basin Interstate Pipeline Company (Williston Basin) filed under Sections 7(b) and 7(c) of the Natural Gas Act (NGA) an application, as amended on September 27, 2002, in Docket No. CP02-37-002, and on March 17, 2003 in Docket No. CP02-37-003, for authority to abandon certain facilities and for a certificate of public convenience and necessity authorizing it to construct and operate the Grasslands Pipeline Project (Grasslands Project). The Grasslands Project would enable Williston Basin to transport up to 80,000 dekatherms per day (Dth/d) from developing coal bed and conventional natural gas production areas in Wyoming and Montana to Northern Border Pipeline Company's (Northern Border) system in North Dakota. Approval of this proposal is in the public interest because the Grasslands Project will provide an outlet for the increasing production of natural gas in the Powder River Basin, enhance access to Williston Basin's storage facilities in eastern Montana, and provide access from Williston Basin's storage facilities to additional downstream transportation facilities.

2. For the reasons discussed herein, the Commission finds that Williston Basin's proposal is required by the public convenience and necessity. Accordingly, we will issue Williston Basin a certificate of public convenience and necessity, as well as the requested abandonment authorization, subject to environmental and other conditions.

**BACKGROUND AND PROPOSAL**

3. Williston Basin's natural gas transmission system includes approximately 3100 miles of pipeline and spans major portions of North Dakota, South Dakota, Montana and

Wyoming. The system traverses the Powder River Basin production area. Williston Basin is not a long haul pipeline with gas flowing essentially in one direction. Rather, the system is configured as a grid or network with hundreds of receipt and delivery points throughout the system. The pipeline is certificated for bi-directional operation. The system is directly connected to several major pipelines so that the regional supplies may be transported to other parts of the United States and Canada.<sup>1</sup>

4. Williston Basin requests authorization to construct the Grasslands Project to provide shippers with a northern outlet, through a new interconnection with Northern Border, for the increased production of coal bed and conventional natural gas in the Powder River Basin.<sup>2</sup> According to Williston Basin, the Grasslands Project will also enhance access to Williston Basin's natural gas storage facilities in eastern Montana. Williston Basin states that gas will flow over the Grassland Project facilities in a south to north direction, but requests that the new facilities be certificated as bi-directional so that the gas may flow north to south if conditions require.

### **Facilities**

5. The proposed Grasslands Project, as amended, will include the construction of approximately 253 miles of pipeline, as well as pipeline loop, within the states of Wyoming, Montana and North Dakota and 5,380 hp of compression, along with related metering and regulating facilities. Williston Basin anticipates construction of the facilities to be completed and made available for service by November 1, 2003. Specifically, Williston Basin requests authorization to:

- (a) construct and operate 223 miles of new 16-inch diameter pipeline from near Belle Creek, Carter County, Montana, to the proposed Manning compressor station in Dunn County, North Dakota;

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<sup>1</sup>These pipelines include: Northern Border Pipeline Company, Northern Natural Gas Company, Kinder Morgan Interstate Gas Transmission, LLC, Colorado Interstate Gas Company, and MIGC, Inc.

<sup>2</sup>The capacity at the existing interconnections with Northern Border, as well as Williston Basin's transportation capacity, is insufficient to move the increased supplies into Northern Border's system.

- (b) construct and operate 28 miles of 16-inch diameter pipeline loop adjacent to Williston Basin's existing Bitter Creek supply lateral pipeline in Campbell County, Wyoming;
- (c) construct and operate 0.9 mile of 12-inch diameter pipeline from the proposed mainline in Fallon County, Montana, to the existing Cabin Creek compressor station in Fallon County, Montana;
- (d) construct and operate 1.0 mile of 16-inch diameter pipeline from the proposed Manning compressor station in Dunn County, North Dakota to an interconnection with Northern Border's compressor station no. 5;
- (e) install and operate 4,180 hp of gas fired compression (consisting of two 2,090 hp compressor units) and electric coolers at the proposed Manning compressor station in Dunn County, North Dakota;
- (f) install and operate an additional 1,200 hp compressor unit at the existing Cabin Creek compressor station in Fallon County, Montana;
- (g) increase the maximum allowable operating pressure (MAOP) of its existing 28-mile, 8-inch diameter Bitter Creek supply lateral pipeline in Wyoming from 1,203 pounds per square inch gauge (psig), to 1,440 psig;
- (h) increase the MAOP of its existing 40-mile, 8-inch diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana, from 1,203 psig to 1,440 psig;
- (i) construct and operate additional facilities, including 14 mainline valves, 6 cathodic protection units, 8 pig launchers/receivers, 5 meter stations and 3 regulators; and
- (j) abandon in place segments of existing pipe at eleven underground road crossings and install new segments with heavier walled pipe.

6. A segment of the currently proposed route traverses a difficult construction area and involves a horizontal directional drilling procedure. As a result, Williston Basin requests authorization to construct an alternate route, referred to as the Gunsite Pass Route, should the proposed horizontal directional drilling prove unsuccessful.

7. In its original application, Williston Basin states that it has sited its proposed facilities to the extent possible in or adjacent to existing rights-of-way. In its September 27, 2002 amendment, Williston Basin confirms that the facilities are still sited in this manner, but also notes that some of the 72 miles of reroutes proposed in that amendment were in response to landowner concerns.<sup>3</sup> Additionally, Williston Basin points out in its September 27, 2002 amendment that upgrading its existing 40-mile Recluse-Bell Creek supply lateral, instead of constructing new facilities, will reduce the Grasslands Project's construction costs and environmental impact. Williston Basin also avers that it has chosen to install a new compressor unit on the existing compressor pad at the Cabin Creek Compressor Station, rather than constructing a new compressor station, in order to reduce, among other things, the need for new land for the Grasslands Project.

8. In a May 16, 2003 response to a data request, Williston Basin states that it has negotiated easements with 220 out of the 260 private landowners along the pipeline route. This accounts for 78 percent or approximately 155 miles of the 200 miles of private land needed for the Grasslands Project. Williston Basin asserts that it may have to exercise the right of eminent domain for land belonging to perhaps 12 or less landowners.

### **Markets**

9. Beginning on October 2, 2000, Williston Basin held an open season for the proposed Grasslands Project. In addition, Williston Basin solicited permanent capacity release offers from existing shippers by conducting a reverse open season. No shipper sought to turn back any capacity. Shippers have executed binding precedent agreements for the project's 80,000 Dth/d of firm incremental capacity. Williston Basin requests confidential treatment for the precedent agreements it filed, which identify the shippers and detail the terms of and rates for service. Nevertheless, Commission policy requires that if shippers subscribe to service under negotiated rates, the pipeline must make a tariff

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<sup>3</sup>See September 27, 2002 Amendment, Exhibit Z-1 (outlining the specific reasons for many of the reroutes.

filing to place the rate into effect. At that time, Williston Basin will be required to identify the shippers and the rates to be paid, among other things.<sup>4</sup>

10. Originally Williston Basin proposed to phase in service over a three-year period. Williston Basin now proposes to provide the full 80,000 Dth/d of service when the system becomes operational because additional shippers desired to subscribe to capacity during the first year. Williston Basin indicates this increase in the market is the result of increased differentials in price between gas that Williston Basin can access from the Powder River Basin production area and gas available from other sources to serve markets to the east of Williston Basin's system.<sup>5</sup>

### **Rates**

11. Williston Basin estimates the cost of the proposed Grasslands Project, as amended, to be \$57,934,098. Williston Basin avers that rolled-in rate treatment is appropriate because the Grasslands Project will provide systemwide operational and reliability benefits and rolled-in rate treatment will reduce existing rates. Specifically, Williston Basin's revised Exhibit N shows a ten-year cost of service of \$10,567,617 and revenues of \$12,200,367, based on billing determinants of 35,027,000 Dth per year,<sup>6</sup> resulting in net revenues of \$1,632,750.<sup>7</sup>

12. Williston Basin contends that the costs of fuel use and lost and unaccounted for gas on its proposed Grasslands expansion should be rolled into the existing systemwide

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<sup>4</sup> See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1196) at 61,241.

<sup>5</sup> Williston Basin cites the CIG (Rocky Mountain) and Ventura price indexes. We note that the Ventura index appears to reflect prices at Ventura, Iowa, where gas may be accessed from western Canada, among other sources. See, e.g., "Daily Price Survey," Gas Daily, May 2, 2003, The McGraw-Hill Companies, Inc.

<sup>6</sup> This figure includes the 80,000 Dth/d (or 29,200,000 Dth annually) of firm transportation, plus 23,000 Dth/d for 151 days during the winter season and 11,000 Dth per day for 214 days during the summer season (or 5,827,000 Dth annually) of interruptible transportation. Williston Basin bases the projected revenue on its currently effective FT-1 and IT-1 rates at a 100 percent load factor.

<sup>7</sup> This figure excludes Williston Basin's claimed fuel savings.

fuel costs because doing so will result in a decrease in the existing fuel reimbursement gas charge and percentage. In Revised Exhibit Z, Williston Basin sets out calculations that show that the fuel reimbursement charge will drop from \$0.09080 to approximately \$0.06983, while the total current fuel reimbursement percentage will decrease from 3.442 percent to approximately 2.647 percent. Williston Basin projects an annual fuel cost saving for existing shippers of \$1,374,530.<sup>8</sup>

13. Williston Basin proposes to provide bi-directional firm and interruptible services available at both recourse and negotiated rates on the Grasslands Project under its existing Rate Schedules FT-1 and IT-1. In an order issued on April 30, 2003, the Commission approved negotiated rate provisions in Williston Basin's tariff to be effective May 1, 2003.<sup>9</sup> Thus, Williston Basin has the requisite authority to offer its Grasslands Project shippers the option to negotiate rates for service.

### **INTERVENTIONS**

14. Notice of Williston Basin's application in Docket No. CP02-37-000 was published in the Federal Register on December 13, 2001 (66 Fed. Reg. 64412). Five timely, unopposed motions to intervene were filed.<sup>10</sup> Northern Plains Resource Council (Northern Plains) and Western Organization of Resource Councils (WORC) include comments raising environmental concerns with their motions. Three non-parties also

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<sup>8</sup>In its March 17, 2003 supplemental filing (amendment), Williston Basin indicates that it had applied for authority in Docket No. RP03-286-000 to, among other things, revise its tariff regarding fuel use to provide that shippers could only reimburse fuel used in-kind. This proposal was approved on March 26, 2003, and establishes new April 1 and October 1 implementation dates for restating fuel reimbursement percentage rates. See 102 FERC ¶ 61,322 (2003). In anticipation of the change to reimbursement in-kind, in its March 17, 2003 supplement, Williston Basin revised its projected interruptible throughput downward to reflect it will need some additional capacity to move the in-kind gas over the system.

<sup>9</sup>See 103 FERC ¶ 61,087 (2003).

<sup>10</sup>Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214. Timely, unopposed motions to intervene were filed by Kinder Morgan Interstate Gas Transmission LLC, Northern Border Pipeline Company, Northern Plains Resource Council, UtiliCorp United Inc. and Western Organization of Resource Council.

filed comments on environmental issues during the intervention period. The environmental issues are addressed later in this order.

15. Notice of Williston Basin's amended application in Docket No. CP02-37-002 was published in the Federal Register on October 15, 2002 (67 Fed. Reg. 63643). No motions to intervene or protests were filed.

16. Notice of Williston Basin's further amendment in Docket No. CP02-37-003 was published in the Federal Register on March 26, 2003 (68 Fed. Reg. 14610). No motions to intervene or protests were filed.

17. The Dakota Resource Council (DRC) and MIGC, Inc., filed motions to intervene out-of-time. The DRC includes comments with its motion, which are discussed later in this order. These petitioners have shown that they have an interest in this proceeding and that their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will grant the motions to intervene out-of-time pursuant to Rule 214 of the Commission's regulations.<sup>11</sup>

## **DISCUSSION**

18. Since the application pertains to the abandonment and construction of facilities used for the transportation of natural gas in interstate commerce, the facilities are subject to subsections (b), (c) and (e) of Section 7 of the NGA and the jurisdiction of the Commission.

### **Compliance with the Certificate Policy Statement**

19. On September 19, 1999, the Commission issued a Certificate Policy Statement to provide guidance as to how the Commission will evaluate proposals for certifying new construction.<sup>12</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the project will serve the public interest. The Certificate Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. The Commission's goal is to

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<sup>11</sup>18 CFR § 385.214(d).

<sup>12</sup>Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000), Order Further Clarifying Statement of Policy, 92 FERC ¶ 61,094 (2000).

give appropriate consideration in evaluating new pipeline construction 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.

20. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to support the project financially 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 affected landowners and communities. 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 then proceed to complete the environmental analysis where other interests are considered.

### **Subsidization**

21. Under the Certificate Policy Statement, the threshold requirement for certifying major new construction is a finding that the applicant will financially support the project without relying on subsidization from its existing customers. Williston Basin's revised Exhibit N reflects a ten-year average anticipated cost of service of \$10,567,617, while the ten year average revenues associated with the Grasslands Project is \$12,200,367. Accordingly, based on the projected revenues and costs, if the costs of the Grasslands Project are rolled into the systemwide rate base, existing shippers would not subsidize the project. This is the case even if the costs associated with fuel use and lost and unaccounted for gas for the Grasslands Project are rolled into the systemwide fuel costs in order to calculate one charge for all shippers on the system, as Williston Basin proposes to do. As Williston Basin demonstrates, the systemwide charge for fuel use will decrease if the expansion fuel use costs are rolled in because the new compression will lower the amount of fuel used on the system relative to the system's total throughput, including the Grassland Project volumes. Therefore, in Williston Basin's next Section 4 general rate case, unless there are material changes in the relevant facts and circumstances related to this proposal, rolled-in rate treatment for the Grassland Project is appropriate.

### **Effect of the Project on Other Constituent Groups**

22. The Commission also finds that existing shippers will not be adversely affected by the proposed Grasslands Project. As explained above, existing shippers will not subsidize the Grasslands Project. Further, based upon an engineering review of the technical and operational information provided by Williston Basin, service to existing shippers will not be degraded as a result of the Grasslands Project. With regard to any adverse effects on existing pipelines in the market and their captive customers, there will be no such effects because the gas transported over the expansion capacity represents incremental requirements of the project shippers; thus, the proposed service will not replace any existing service provided by another pipeline.

23. With respect to the effects of the Grasslands Project on private landowners, the Commission finds that Williston Basin has made adequate efforts to minimize those effects and the potential exercise of eminent domain. First, Williston Basin has routed approximately 63 percent of the pipeline in or adjacent to existing right-of-way.<sup>13</sup> This approach tends to minimize the new easements which are required and the difficulty of obtaining them because the area is already disturbed. Second, in its May 16, 2003 response to the data request, Williston Basin indicates that it is likely to exercise the power of eminent domain to obtain easements from only about 5 percent of the total number of private landowners. Therefore, the extent to which Williston Basin may have to exercise the right of eminent domain to obtain easements is likely to be relatively low for this project. Nevertheless, because the right of eminent domain may have to be exercised, there could be some residual adverse effects on private landowners who have not voluntarily agreed to easements. As discussed below, however, the Commission finds that the public benefits of the Grasslands Project outweigh those potential residual adverse effects.

### **Benefits**

24. In addition to the fact that Williston Basin has subscriptions for 100 percent of the incremental capacity of the Grasslands Project, reflecting that there is an existing market need that will be met by the Grasslands Project, there are other benefits that will flow from Williston Basin's proposal. One of the primary purposes of the Grasslands Project is to transport increasing volumes of gas from the coal bed natural gas production areas of the Powder River Basin located in North Central Wyoming and South Central Montana in a northerly direction to a new interconnection with Northern Border, which in turn

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<sup>13</sup>See Final Environmental Impact Statement at p. 2-2.

connects to several other pipelines.<sup>14</sup> This will allow the increasing Powder River Basin production to reach markets located to the east of the production areas. Williston Basin demonstrates that production of the coal bed natural gas has increased dramatically over the last few years. Studies cited by Williston Basin predict continued increases in production in the future.<sup>15</sup> The Grassland Project will relieve already existing constraints in the availability of take-away capacity. Thus, the Grasslands Project will benefit potential gas consumers and end-users because they will have access to a significant source of natural gas.

25. Further, Williston Basin shows that the bi-directional flow capability of the proposed Grasslands Project will benefit the system because it will afford shippers the opportunity to access all of Williston Basin's on- and off-system markets. Specifically with the addition of only one new compressor station and one new compressor unit, representing an estimated 7.6 percent increase in existing system horsepower, system throughput could increase by about 51 percent.<sup>16</sup> This throughput estimate includes potential interruptible volumes of 5.8 Bcf and 29.2 Bcf of firm transportation throughput that the Grasslands Project will move on an annual basis. Thus, the Grasslands Project will significantly increase system efficiency by providing shippers with additional flexibility and also by allowing the pipeline more flexibility to alleviate constraints in the

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<sup>14</sup>These pipelines include: Northern Natural Gas Company, Natural Gas Pipeline Company of America, ANR Pipeline Company and Midwestern Gas Transmission Company.

<sup>15</sup>Williston Basin notes that a December 2000 study by Goolsby and Associates estimates recoverable coal bed natural gas reserves in the Powder River Basin to be at 25 Tcf. See "Estimates of Coal Volumes and Coalbed Methane in Place, Powder River Basin, Wyoming", Wyo. Geo-Notes, December 2000. This estimate doubles previous estimates that ranged from 9 to 12 Tcf. Williston Basin also points to a September 2001 Congressional Oversight Hearing where the Wyoming Oil and Gas Conservation Commission stated that within the last four years, production of coal bed natural gas from the Powder River Basin has increased 390 percent.

<sup>16</sup>See September 27, 2002 Amendment, pp. 12-14. It should be noted that the throughput volumes and percentages cited by Williston Basin on this topic in that amendment have been adjusted in this order to reflect that less capacity will be available for interruptible transportation once all shippers are required to reimburse in-kind for fuel use and lost or unaccounted for gas.

event of operational problems or emergency situations on the system.<sup>17</sup> Williston Basin also notes that because of the bi-directional flow, shippers on Northern Border's system will be able to access Williston Basin's storage facilities. In light of these benefits, the Commission finds that to the extent there are residual adverse effects on any of the constituent groups of concern in the Certificate Policy Statement, these benefits outweigh the potential adverse effects.

### **Rate Issues**

26. As explained above, in Williston Basin's next Section 4 rate case, the costs associated with the Grasslands Project should be received rolled-in treatment, unless there are material changes in circumstances warranting alternative treatment. Also, as noted, Williston Basin is now authorized to charge negotiated rates. If Williston Basin charges any shippers negotiated rates, as opposed to the recourse rate identified in its tariff, consistent with the Alternative Rate Policy Statement,<sup>18</sup> and the Commission's decision in NorAm Gas Transmission Company (NorAm),<sup>19</sup> Williston Basin must file either its negotiated rate contracts or numbered tariff sheets not less than 30 and not more than 60 days prior to the commencement of service on the expansion facilities. The tariff filing must state for each shipper the negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any material aspect from the form of service agreement in Williston Basin's FERC Gas Tariff. Williston Basin must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Finally, Williston Basin must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its

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<sup>17</sup>In its original application, Williston Basin explains that the Grasslands Project will provide an alternative to shipping gas in a southerly direction over the existing pipeline facilities located between Cabin Creek and Bell Fourche points in the event there are operational difficulties on that portion of Williston Basin's system. Because the new facilities will be able to operate bi-directionally, gas moving between these points could flow south on the new facilities. Thus, the Grasslands Project will provide operational reliability for Williston Basin's Black Hills Subsystem. See November 30, 2001 Application at pp. 11-12.

<sup>18</sup>See supra note 4.

<sup>19</sup>77 FERC ¶ 61,011 (1996).

negotiated rates in sufficient detail so that they can be identified in Statements G, I and J in any future NGA Section 4 or 5 rate case.<sup>20</sup>

27. The Commission is not approving any particular negotiated rate here; rather, it is approving the existing recourse rate as the initial rate for service provided by the Grasslands Project facilities.<sup>21</sup> If Williston Basin is charging negotiated rates for any project shippers, when it makes the necessary Section 4 filing discussed above, interested parties may then protest, should they believe any rate is discriminatory.

### **Engineering**

28. A review of the engineering data provided by Williston Basin confirms that the proposed Grassland Project facilities are properly designed to provide the 80,000 Dth/d of firm transportation service for which the expansion shippers have subscribed. Further, the review indicates that Williston Basin has accurately described the greater flexibility that will be available to its shippers as a result of the Grasslands Project.

### **Accounting Issues**

29. Williston Basin proposes to abandon in place segments of existing pipe at eleven road crossings. It proposes to replace these segments with heavier walled pipe to be located adjacent to the abandoned pipe. Williston Basin proposes to account for the abandonment as a normal retirement. Accordingly, Williston Basin proposes to record the retirement in Account 108, Accumulated Provision for Depreciation of Gas Utility Plant and Account 101, Gas Plant in Service. Williston Basin's proposal to account for the abandonment as a normal retirement is in accordance with Gas Plant Instruction 10 of the Uniform System of Accounts and therefore is approved.

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<sup>20</sup>Also, consistent with the Alternative Rate Policy Statement and NorAm, the Commission will not permit Williston Basin to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

<sup>21</sup>The Commission has declined to examine negotiated rates in the context of its review of the merits of a certificate application. See Independence Pipeline Co., et al., 91 FERC ¶ 61,102 at 61,341, order issuing certificates, 92 FERC ¶ 61,022 at 61,047, order on rehearing, 92 FERC ¶ 61,268 (2000).

**ENVIRONMENT**

30. On February 5, 2002, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement (NOI) for the proposed Grasslands Project. On October 8, 2002, an Amended NOI was issued to give notice that Williston Basin had filed an amendment to its application for the Grasslands Project. In November 2001, Williston Basin held public open houses in communities along the proposed right-of-way to inform landowners about the Grasslands Project and to respond to their questions. Commission environmental staff held three public scoping meetings to provide the public with an opportunity to learn more about the Grasslands Project and to comment on environmental issues to be addressed in the environmental impact statement (EIS). Numerous individuals, federal and state agencies, counties, municipalities, and organizations provided written comments in response to the NOI.

31. Commission staff prepared a Draft EIS (DEIS) that addressed geology; cultural resources; soils and vegetation; water resources and wetlands; wildlife and fisheries; endangered and threatened species; socioeconomics impacts; public safety; cumulative impacts; air quality and noise; alternative routes and site locations; and land use. The public was afforded the opportunity to review and comment on the DEIS in the form of written comments and at public meetings. Written comments were received from four federal agencies, thirteen state agencies, one local agency, seven individuals or special interest groups, fourteen businesses and trade organizations, and the applicant. The concerns raised have been addressed in the Final EIS (FEIS), which was published on May 8, 2003.

32. The U.S. Department of the Interior, Bureau of Land Management (BLM) and the U.S. Department of Agriculture, Forest Service (USFS) were cooperating agencies in the preparation of the FEIS. Approximately 418 copies of the FEIS were mailed to agencies, groups, and individuals on the mailing list associated with the Grasslands Project. The FEIS includes copies of all comment letters received on the DEIS and environmental staff's responses to those comments. Based on information provided by Williston Basin and further developed by field investigations, literature research, alternative and route variation analyses, and contacts with federal, state, and local agencies and individual members of the public, the FEIS concludes that construction and operation of the proposed Grasslands Project will result in limited adverse environmental impact.

33. To address USFS concerns and avoid the need to establish a new utility corridor, Williston Basin proposes to align its pipeline adjacent to existing rights-of-way within the Little Missouri National Grasslands. Williston Basin also proposes to employ special construction methods within the Little Missouri National Grasslands to avoid any

viewshed impacts at Gunsight Pass, a bluff overlooking the Little Missouri River. Further, Williston Basin proposes to cross the Little Missouri River by employing a horizontal directional drill construction technique to avoid impacts on this waterbody, which is listed on the Nationwide Rivers Inventory as a potential candidate for inclusion in the Wild and Scenic River System.

34. As noted, Williston Basin's September 27, 2002 amendment includes a request for authorization to construct both the proposed route and an alternative route between milepost 226.5 and milepost 227.9, along the proposed pipeline in the Gunsite Pass area. Williston Basin states that it seeks approval of the alternative Gunsite Pass route in the event that its proposed route, which involves the horizontal directional drilling procedure referred to above, is not successful. Both the proposed route and the alternative route through Gunsite Pass were analyzed in the FEIS, and environmental staff determined that the proposed Gunsite Pass route is environmentally preferable over the alternative route. The FEIS does not approve the alternative route as Williston Basin requests. However, the environmental review of the alternative route has been completed and the FEIS determines that this alternative route would not result in significant environmental impacts. As noted in the FEIS, Commission approval of the alternative route could be acted on expeditiously in the event that the proposed route through Gunsite Pass is unsuccessful.

35. The FEIS concludes that if the Grasslands Project is constructed and operated as Williston Basin proposes and in accordance with the recommended mitigation measures in the Appendix hereto, the Grasslands Project would be environmentally acceptable. Although many factors were considered in reaching this determination, the principal reasons were: (1) about 63 percent of the new pipeline would either overlap or be adjacent to existing pipeline or other linear rights-of-way, reducing the need to establish new utility corridors; (2) Williston Basin would implement the FERC staff's *Erosion Control, Revegetation, and Maintenance Plan* and the FERC staff's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) to mitigate impacts on soils, wetlands, waterbodies, and other important resources; (3) FERC staff recommended a mitigation condition which will require Williston Basin to reduce its nominal right-of-way width and minimize project-related disturbance on upland forest and open range wildlife habitat; and (4) an environmental inspection program would ensure compliance with all mitigation measures that become conditions of the certificate.

36. By letter dated April 3, 2003, the U.S. Fish and Wildlife Service (USFWS) concurred with the FERC staff's determination of effects on federally-listed and proposed species regarding the Grasslands Project and stated that formal consultation under Section 7 of the Endangered Species Act is not required. Therefore, environmental condition 19

of the FEIS is no longer required and has been removed from the attached environmental conditions.

37. As noted in the intervention section of this order, three environmental organizations that intervened in this proceeding filed comments with their motions to intervene. Northern Plains, a non-profit corporation in Montana, and WORC and DRC, non-profit corporations in North Dakota, all seek to ensure that the Commission complies with the National Environmental Policy Act (NEPA) and other applicable federal and state environmental laws when evaluating the proposed Grasslands Project. In addition, the parties contend that to ensure that the Commission adequately evaluates the cumulative environmental impacts of this proposal, an EIS is necessary.<sup>22</sup> Section 380.6 of the Commission's regulations requires that an EIS be prepared for major construction projects using right-of-way in which there is no existing natural gas pipeline.<sup>23</sup> The proposed Grasslands Project falls under this requirement, therefore, the Commission's environmental staff prepared an EIS.

38. The Commission has reviewed the information and analysis contained in the FEIS regarding the potential environmental effect of the Grasslands Project. Based on consideration of this information, the Commission agrees with and adopts the conclusions presented in the FEIS. Therefore, the Commission finds that, if it is constructed and operated as Williston Basin proposes and in accordance with the recommended environmental mitigation measures in the Appendix to this order, the Grasslands Project will be environmentally acceptable.

39. The Commission notes that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or

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<sup>22</sup>Three non-parties filed comments during the intervention period for the original application filed in Docket No. CP02-37-000, before the NOI was issued. The USFWS raises a concern regarding federally listed or proposed endangered species, which are addressed in the FEIS at Section 3.6. The Wyoming Office of Federal Land Policy and the Campbell County, Wyoming Weed and Pest District raise concerns about the potential occurrence of noxious weeds along the pipeline route, which is addressed in the FEIS at Section 3.5.1.3.

<sup>23</sup>18 C.F.R. § 380.6.

operation of facilities approved by this Commission.<sup>24</sup> Williston Basin shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Williston. Williston Basin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

## **CONCLUSION**

40. For all of the reasons discussed herein, the Commission concludes that Williston Basin's proposed Grasslands Project is required by the public convenience and necessity and that the proposed abandonment in place of certain segments of pipeline identified in the exhibits to the application is permitted and approved.

41. The Commission, on its own motion, received and made a part of the record all evidence, including the application, as amended, and exhibits therefore, submitted in this proceeding, and upon consideration of the record,

### **The Commission orders:**

(A) Permission and approval of Williston Basin's abandonment, in place, of the segments of existing pipe at eleven road crossings, as described in the application, as amended, and this order, are granted.

(B) A certificate of public convenience and necessity is issued authorizing Williston Basin to construct and operate the Grasslands Project facilities, as described in the application, as amended, and this order.

(C) The certificate of public convenience and necessity as authorized in Paragraph (B) above is conditioned upon Williston Basin's compliance with the Natural Gas Act and all relevant provisions of the Commission's regulations, in particular with Part 154 and paragraphs (a), (c), (e) and (f) of Section 157.20 of the Commission's regulations.

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<sup>24</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Construction of the facilities authorized herein shall be completed and made available for service within 12 months from the date of this order in accordance with Section 157.20(b) of the Commission's regulations.

(E) The authorizations issued in Paragraphs (A) and (B) above are conditioned on Williston Basin's compliance with the environmental conditions set out in the Appendix hereto.

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

(G) Williston Basin shall notify the Commission within ten days after it abandons the facilities as authorized in Paragraph (A) above.

(H) Prior to commencing construction, Williston Basin shall execute a service agreement(s) for the level and term of service represented in the precedent agreement(s).

(I) Williston Basin's request for preapproval of rolled-in rate treatment is granted, absent a material change in circumstances at the time Williston Basin makes its next general NGA Section 4 rate filing, in accordance with the discussion in this order.

(J) Williston Basin shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under recourse rates in accordance with Section 154.309 of the Commission's regulations.

(K) The late interventions filed by the Dakota Resource Council and MIGC, Inc., are granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

## APPENDIX

### Environmental Conditions

1. Williston Basin 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 environmental impact statement (EIS), unless modified by this Order. Williston Basin 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 FERC's Director of 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**, Williston Basin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Williston Basin shall file with the Secretary a detailed set of final 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.

Williston Basin'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. Williston Basin'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 for a pipeline to transport a commodity other than natural gas.

5. **Prior to construction**, Williston Basin shall file with the Secretary of the Commission and the appropriate land-management agency(s) detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type 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 OEP **before construction in or near that area**.

This requirement does not apply to 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, Williston Basin shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Williston Basin will implement the mitigation measures required by this Order. Williston Basin must file revisions to the plan as schedules change. The plan shall identify:
  - a. how Williston Basin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. what training and instructions Williston Basin 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 Williston Basin's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Williston Basin will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the mitigation training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. Williston Basin shall employ at least two EIs per construction spread. The EIs shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigative 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 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. Williston Basin shall file updated status reports prepared by the head EI with the Secretary on a **weekly** basis until all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports also will 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 EIs 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 Williston Basin from other federal, state or local permitting agencies concerning instances of noncompliance, and Williston Basin's response.
9. Williston Basin 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 right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Williston Basin shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Williston Basin has complied with or will comply with. This statement also shall identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Williston Basin shall develop an Unanticipated Discoveries of Paleontological Resources Plan (UDPRP), in consultation with the appropriate state and federal agencies, outlining the steps that would be taken in the event that fossils or other paleontological resources are discovered during construction. Williston Basin shall file the UDPRP with the BLM and the Secretary prior to initiating construction.
12. In the event that the directional drill of the Little Missouri River fails, Williston Basin shall not open cut the Little Missouri River until it files with the Secretary a site-specific alternate river crossing plan, developed in consultation with the FERC staff, U.S. Army Corps of Engineers (USCOE), USFS, BLM, and National Park Service (NPS). The plan shall include:
- a. a detailed explanation of how/why the directional drill failed;
  - b. a description of how Williston Basin would seal the abandoned drill hole;
  - c. scaled drawings identifying all areas that would be disturbed by an open-cut crossing; and
  - d. a description of the mitigation measures that would be implemented to minimize the extent and duration of disturbance on the river.

In addition, Williston Basin shall **not begin an open-cut crossing** of the Little Missouri River until:

- a. the FERC and USCOE evaluate the potential impact on the Nationwide River Inventory (NRI)-designated river and initiates consultation with the NPS;
- b. the agencies determine that the open-cut crossing and mitigation plan are acceptable; and
- c. the Director of OEP notifies Williston Basin in writing that it may proceed with the alternate river crossing plan.

13. Williston Basin shall not construct its facilities during restricted periods in areas of crucial winter range or parturition areas (as identified by milepost [MP] and timing restriction period in **table 3.4-2** of the EIS) for big game species unless approved by the appropriate state and federal land-managing agencies in writing. Williston Basin shall verify these MP locations and any potential seasonal construction constraint periods along its construction right-of-way through discussions with the BLM, USFS, and state wildlife agencies. Williston Basin shall file the results of its consultations with the agencies with the Secretary, and revise its final construction plans as appropriate.
14. Williston Basin shall construct its project between July 15 through November 30 in areas of suitable greater sage grouse and sharp-tailed grouse habitat (in consultation with the appropriate agencies) to avoid impacts to nesting or breeding grouse species. If construction extends into the spring breeding season, Williston Basin shall conduct additional grouse surveys in March and early April through areas of suitable habitat immediately prior to construction and implement a seasonal construction constraint between March 1 and June 15 within a 2-mile radius of active lek sites. Williston Basin shall implement a 0.25-mile construction avoidance buffer around known lek sites and in the vicinity of important nesting, brooding, and wintering habitat as identified by the agencies. Exceptions or waivers to these seasonal construction constraints must be authorized in writing by the applicable agencies on a case-by-case basis. If surveys are required, Williston Basin shall submit/file survey results with the BLM and the Secretary. Williston Basin shall work with the applicable state and land-management agencies to develop additional appropriate mitigation measures to minimize potential effects related to long-term habitat loss.
15. Williston Basin's nesting raptor surveys shall be conducted within 1.0 mile of the right-of-way for all raptor species. Williston Basin shall consult with the appropriate state and federal land-managing agencies for appropriate survey protocols. Williston Basin shall realign its route as necessary to avoid active nest sites identified within the proposed areas of disturbance. If avoidance is not possible, for each active nest identified, Williston Basin shall develop a site-specific mitigation plan, which may include, but not be limited to, minimizing the removal of trees (diameter of 10 inches or greater) or the establishment of buffer areas on a species-specific and site-specific basis. These measures shall be developed in coordination with the jurisdictional agencies. Williston Basin shall submit/file survey results with the BLM and the Secretary prior to construction. If active nests cannot be avoided, Williston Basin also shall contact the USFWS' Migratory Bird Office in Denver, Colorado, to obtain necessary permits. If a

- permit cannot be issued, Williston Basin shall confer with the agencies on project modification that would avoid the taking of migratory birds, their young, eggs or nest.
16. Williston Basin shall limit its nominal construction right-of-way width to 75 feet. **Prior to construction**, Williston Basin shall file with the Secretary detailed aerial alignment maps/sheets at a scale not smaller than 1:6,000 identifying all additional temporary work spaces that will be required to safely construct the pipeline within a 75-foot-wide right-of-way. In addition to the alignment sheets, Williston Basin shall file a tabulated list, by MP, of each additional extra work space, its dimensions, and justification for each extra work space.
  17. Williston Basin shall prepare a revegetation plan for riparian areas which includes planting native tree and shrub species on the temporary right-of-way and non-maintained portion of the permanent right-of-way. Williston Basin shall consult with the USFWS, U.S. Environmental Protection Agency, USCOE, and the appropriate state agencies to determine the density for planting the native tree and shrub species. The plan shall include Williston Basin's procedures for monitoring the growth and success of these plantings. Williston Basin shall file this plan with the Secretary for review and obtain written approval from the Director of OEP before implementing the plan.
  18. **Prior to construction**, Williston Basin shall survey the entire right-of-way, including pipe storage and contractor yards, for noxious weed populations and develop a project-specific noxious weed management plan in consultation with the appropriate county weed boards and the appropriate federal and state land-management agencies. Williston Basin shall conduct post-construction monitoring of the right-of-way for at least 5 years to ensure that control measures have been effective and to determine if additional control measures are necessary. Any chemical treatment of noxious weeds must be approved by the agencies before spraying takes place. Williston Basin shall file the noxious weed management plan with the Secretary once it is completed.
  19. **Prior to any construction** in Wyoming, Williston Basin shall conduct ferret surveys in prairie dog colonies in Wyoming located within 0.5 mile of the proposed route. Surveys shall be conducted after July 1 and before July 31 using USFWS-approved ferret survey methodology, as described in the Black-footed Ferret Survey Guidelines (1987); and

If black-footed ferrets are confirmed along the project route, Williston Basin shall develop appropriate black-footed ferret protection procedures for the project, in coordination with the USFWS.

Williston Basin must receive written approval from the Director of OEP before implementing any mitigation measures. Williston Basin shall not begin construction activities in Wyoming until:

- a. FERC receives comments from the USFWS regarding the survey results;
- b. FERC completes formal consultation with the USFWS, if required; and
- c. Williston Basin has received written notification from the Director of OEP that construction or use of mitigation may begin.

20. If construction is required during the mountain plover breeding and/or nesting season (March 1 through July 15), Williston Basin shall conduct presence/absence surveys within areas of potentially suitable breeding habitat within 0.25 mile of the project right-of-way, temporary use areas, and aboveground facilities, in accordance with the most current USFWS *2002 Mountain Plover Survey Guidelines*, and in coordination with the USFWS, before construction. If active nests are identified, appropriate protection measures including avoidance of the nest and a 0.25-mile construction buffer shall implemented on a site-specific basis to minimize the potential impacts to breeding plovers.

In addition, Williston Basin shall coordinate with the USFWS to determine if specific revegetation seed mixes are required within potentially suitable breeding habitat that will be disturbed by the project construction activities.

21. Williston Basin shall continue to consult with the appropriate offices of the BLM and state wildlife agencies to update the species lists (table I-3 of the EIS) and to determine if additional surveys for BLM special status species and/or state-listed species are required.
22. Williston Basin shall defer construction and use of the Grasslands Project facilities, including the related use of ancillary areas for staging, storage, temporary work areas, and new or to-be-improved access roads, until:
- a. Williston Basin files with the Secretary, and the appropriate SHPOs, federal land-managing agencies, and other consulting parties all additional required cultural resources inventory and evaluation reports, revised final unanticipated discovery plans, and any necessary treatment plans;

- b. Williston Basin files the comments of appropriate SHPO, federal land-managing agencies, and other consulting parties on all cultural resources investigation reports, and plans;
- c. the Advisory Council on Historic Preservation has been given an opportunity to comment if any historic properties would be adversely affected; and
- d. the Director of OEP reviews and approves all cultural resources reports and plans, and notifies Williston Basin that it may proceed with mitigation programs or construction.

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

23. Williston Basin shall file noise surveys with the Secretary **no later than 60 days** after placing the Manning Compressor Station in service. If the noise attributable to the operation of the Manning Compressor Station at full load exceeds a day/night noise level of 55 decibels on the “A” weighted scale at any nearby noise-sensitive areas, Williston Basin shall file a report on what changes are needed and shall install additional noise controls to meet the level within one year of the in-service date. Williston Basin shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.