

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

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

MarkWest Pioneer, L.L.C.

Docket No. CP08-404-000

ORDER ISSUING CERTIFICATES

(Issued November 12, 2008)

1. On May 20, 2008, MarkWest Pioneer, L.L.C. (MarkWest) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct and operate approximately 50 miles of new natural gas pipeline, approximately 19,500 horsepower (hp) of compression at two compressor stations, and related facilities in Coal, Atoka, and Bryan Counties in southeastern Oklahoma (Arkoma Connector Pipeline or project). The project is designed with a peak deliverability of 638,000 dekatherms per day (Dth/d). MarkWest also requests a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open-access transportation services and a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations. For the reasons stated below, we will grant the requested authorizations, subject to conditions.

**I. Background and Proposal**

2. MarkWest is a limited liability company and a subsidiary of MarkWest Energy Partners, L.P. that was formed to own and operate the Arkoma Connector Pipeline. Upon receipt of its requested certificate authorizations, MarkWest will become a natural gas company within the meaning of NGA section 2(6).

3. MarkWest states that the Arkoma Connector Pipeline will play an important role in supporting the development of a new unconventional domestic supply source, namely, Woodford Shale production in southeastern Oklahoma. MarkWest explains that the Arkoma Connector Pipeline will provide needed pipeline capacity to connect this production area to the interstate pipeline grid by serving as a feeder line to two recently

certificated projects, the Midcontinent Express Pipeline LLC (Midcontinent)<sup>1</sup> and the Gulf Crossing Pipeline Company, LP (Gulf Crossing).<sup>2</sup> These pipelines will, in turn, provide outlets for the Woodford producers to major markets in the eastern United States.

4. MarkWest states that its affiliate, MarkWest Energy Partners, L.P., has already invested more than \$200 million in constructing Woodford area gathering infrastructure and that the Arkoma Connector Pipeline is the logical extension of that infrastructure, which will ensure the continued timely development of the Woodford supply source.

**A. The Proposed Facilities**

5. The Arkoma Connector Pipeline will consist of a 24-inch diameter pipeline originating from a stub-line outlet of the existing Sprague Treating Plant owned by MarkWest's affiliate, MarkWest Oklahoma Gas Company L.L.C., located northeast of Colgate, Oklahoma, and extending approximately 50 miles in a southeasterly direction to near Bennington, Oklahoma, where the pipeline will interconnect with the Midcontinent and Gulf Crossing pipelines. As proposed, the project includes two compressor stations: (1) an Origin Compressor Station, with four 3,550 hp compressor units, each unit consisting of a Caterpillar Model 3612 (or equal) reciprocating, natural gas-fired, internal combustion engine driving a reciprocating compressor; and (2) a Mid-Line Compressor Station, with three 1,775 hp compressor units, each consisting of a Caterpillar 3606 engine (or equivalent). MarkWest also proposes to construct and operate: (1) pigging facilities, including a pig launcher at the Origin Compressor Station, and a pig receiver at the interconnect site near the terminus of the pipeline; (2) mainline valves at the origin and terminus of the pipeline and at intermediate points within the permanent right-of-way of the pipeline; and (3) one interconnect site near Bennington, Oklahoma, with meter and regulator facilities to connect to the Midcontinent and Gulf Crossing pipeline systems.

6. MarkWest seeks to place the Arkoma Connector facilities in service during the second quarter of 2009.

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<sup>1</sup> Midcontinent was authorized to construct and operate a 506-mile pipeline by order issued on July 25, 2008. *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

<sup>2</sup> Gulf Crossing was authorized to construct and operate facilities known as the Gulf Crossing Project by order issued on April 30, 2008. *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100 (2008).

**B. Open Season and Precedent Agreements**

7. MarkWest states that it conducted an open season from March 20 through April 21, 2008, soliciting bids for firm service under Rate Schedule FT-1, a standard firm service subject to a reservation charge, and Rate Schedule FT-2, a production-based service subject to a volumetric charge. MarkWest states that it offered to provide these services at cost-based recourse rates or negotiated rates.

8. MarkWest explains that the open season identified three shipper categories, Anchor Shipper, Foundation Shipper and Standard Shipper. Anchor Shippers were identified as shippers that, prior to the end of the open season, made a binding commitment for long-term service of a magnitude and value that is essential to the economic viability of the Arkoma Connector Pipeline. MarkWest announced in the open season posting that it entered into precedent agreements with two Anchor Shippers for a total of 576,000 Dth/d of firm service prior to the commencement of the open season.<sup>3</sup> MarkWest states that the Anchor Shipper agreements include negotiated rates that are subject to an annual adjustment based on changes in the Producer Price Index, certain Most Favored Nation rate assurances, contractual rollover rights, and a fuel cap.<sup>4</sup> In the open season, MarkWest stated that it was willing to negotiate deals of comparable value for shippers offering binding commitments of comparable value to the project.

9. MarkWest states that the Foundation Shipper category was for shippers making a binding commitment for firm service prior to the end of the open season, but that did not qualify as an Anchor Shipper. MarkWest states that it was willing to provide Foundation Shippers a negotiated rate with a fuel cap. The Standard Shipper category applies to shippers making a request for service after the end of the open season. MarkWest states that Standard Shipper commitments do not support the initial economics of the Arkoma Connector Pipeline in the same manner as commitments made prior to the end of the open season. As such, MarkWest states it does not guarantee a Standard Shipper the negotiated rates or other terms offered to Anchor Shippers and Foundation Shippers.

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<sup>3</sup> MarkWest executed precedent agreements under Rate Schedule FT-2 with Newfield Exploration Mid-Continent Inc. (Newfield) for 500,000 Dth/d of firm transportation for a term of 9 years and with Chesapeake Energy Marketing, Inc. (Chesapeake) for 76,000 Dth/d of firm transportation for a term of 10 years. Exhibit I contains a copy of each of the executed precedent agreements. MarkWest 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.

<sup>4</sup> MarkWest states that prior to commencing service it will file for Commission review the negotiated rate agreements (or a tariff sheet summarizing those agreements) and will show any material deviations from the form of service agreements.

10. MarkWest states that it received no further bids in the open season. However, it states that the project is 90 percent subscribed with the executed precedent agreements such that it has sufficient committed firm service to proceed with construction of the Arkoma Connector Pipeline. MarkWest states that it will assume the risk for any unsubscribed capacity and expects that the project will be fully subscribed by the time the Arkoma Connector Pipeline goes into service.<sup>5</sup>

**C. Proposed Tariff and Rates**

11. MarkWest proposes to offer cost-based firm (Rate Schedule FT-1 and FT-2) and interruptible (Rate Schedules IT) open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.<sup>6</sup> Rate Schedule FT-1 is a traditional firm service that includes a reservation charge to recover fixed costs and a quantity charge that recovers variable costs. The FT-2 Rate Schedule is a production-based service designed to accommodate the needs of Woodford producers. Under Rate Schedule FT-2, the shipper makes a commitment of production in exchange for volumetric firm service with no fixed reservation charge. The FT-2 shipper pays only a Firm Quantity Charge for the gas it actually transports. MarkWest submits a pro forma tariff in Exhibit P that it states has been modeled after provisions of other Commission-approved tariffs and is designed to provide open-access, non-discriminatory transportation service in accordance with Commission policy and precedent.

**D. Requests for Blanket Certificates**

12. MarkWest requests issuance of a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations for authority to provide open-access firm and interruptible transportation services on behalf of others in interstate commerce, on a self-implementing and non-discriminatory basis with pre-granted abandonment. MarkWest also seeks a blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations to perform certain routine construction, operation, and abandonment activities associated with the proposed facilities.

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<sup>5</sup> MarkWest states that if it sells capacity to its marketing affiliate, it will comply with all the Commission's Standards of Conduct pursuant to 18 C.F.R. Part 358. MarkWest also indicates it will supplement Exhibit I to the subject application if additional precedent agreements are executed prior to the issuance of a certificate.

<sup>6</sup> See MarkWest's FERC Gas Tariff, Pro Forma Original Volume No. 1.

## II. Notice, Interventions, and Comments

13. Public notice of MarkWest's application was published in the *Federal Register* on June 6, 2008 (73 Fed. Reg. 32,316). Timely, unopposed motions to intervene were filed by Newfield, Enogex LLC, Chesapeake, and Midcontinent pipeline. Timely, unopposed motions to intervene are granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure.<sup>7</sup> Newfield and Chesapeake filed comments in support of MarkWest's proposed project.

## III. Discussion

14. Since MarkWest proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of the NGA.

### A. Certificate Policy Statement

15. On September 15, 1999, the Commission issued a policy statement to provide guidance as to how we will evaluate proposals for certificating major new construction.<sup>8</sup> The Certificate 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 Certificate 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.

16. 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

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<sup>7</sup> 18 C.F.R. § 385.214 (2008).

<sup>8</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

17. As stated, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Since MarkWest is a new pipeline and has no existing customers, there is no potential for subsidization by existing customers. Therefore, we find that MarkWest has satisfied the threshold requirement of the Certificate Policy Statement.

18. MarkWest also meets the remaining criteria for certification of new facilities set forth in the Certificate Policy Statement. There will be no adverse effect on existing services because MarkWest has no current customers. The new pipeline should also benefit interconnecting pipelines by providing new sources of gas for them to transport. Construction of the proposed facilities will have minimal adverse impacts on landowners or communities because they will be located in a rural portion of southeast Oklahoma and, wherever possible, MarkWest has utilized existing rights-of-way. Only two landowners raised concerns regarding the proposed pipeline route. Ms. Marilyn C. Whittington (Ms. Whittington) objected to the proposed project because she already has two pipelines on her property and expressed concerns regarding the restoration of the portion of the project's easement on her property. Lucky Base Ranch, Inc. (Lucky Base) raised concerns regarding the proposed project's impacts to the peach orchard and above-ground structures on its property. As discussed in the environmental analysis section, we find that these landowner concerns have been appropriately mitigated. Thus, any impacts to landowners and communities are minimal.

19. MarkWest has entered into long-term precedent agreements for 90 percent of the design capacity of the project. In addition, the project will benefit consumers in the eastern United States by providing access to new, competitive supplies of natural gas. There is a need for increased pipeline capacity to access Woodford gas supplies and the Arkoma Connector Pipeline is designed to meet that need. For these reasons, we conclude that any potential adverse effects of the project are outweighed by the substantial benefits of the project and approval of the Arkoma Connector Pipeline is required by the public convenience and necessity.

## **B. Blanket Certificates**

20. MarkWest requests authority for a Part 284, Subpart G blanket certificate to provide open-access transportation services. We will grant MarkWest's request for a Part 284 blanket certificate, subject to the conditions imposed below.

21. MarkWest also requests authority for a Part 157, Subpart F blanket certificate. Under a Subpart F blanket certificate, a pipeline may construct and operate certain facilities without filing a case-specific application for a certificate under section 7(c) of the NGA. MarkWest will become an interstate pipeline once it accepts the certificate to construct and operate the facilities issued in this order and it has stated in its application that it will comply with the provisions of subpart F of Part 157. Thus, we will issue a blanket construction certificate to MarkWest.

### C. Rates and Tariff

#### 1. Initial Rates

22. MarkWest proposes to offer cost-based firm (Rate Schedule FT-1 and FT-2) and interruptible (Rate Schedule IT) open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.<sup>9</sup> Rate Schedule FT-1 is a traditional firm service that includes a reservation charge to recover fixed costs and a quantity charge that recovers variable costs. The FT-2 Rate Schedule is a production-based service designed to accommodate the needs of Woodford producers. Under Rate Schedule FT-2, the shipper makes a commitment of production in exchange for volumetric firm service with no fixed reservation charge and the FT-2 shipper pays only a firm charge for the gas it actually transports.

23. The initial proposed FT-1 and FT-2 recourse rates are derived using a \$29,985,565 first year cost-of-service<sup>10</sup> and annual reservation billing determinants of 7,656,000 Dth based on MarkWest's maximum daily design capacity of 638,000 Dth. The proposed maximum cost-based FT-1 reservation rate is \$3.88 per Dth (a \$0.1276 per Dth daily rate). MarkWest estimates \$272,878 of variable costs resulting in a proposed FT-1 commodity rate of \$0.0012 per Dth. The proposed maximum cost-based FT-2 firm quantity charge is \$0.1288 per Dth (FT-1 reservation rate at a 100 percent load factor plus the FT-1 commodity rate).

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<sup>9</sup> See MarkWest's FERC Gas Tariff, Pro Forma Original Volume No. 1.

<sup>10</sup> MarkWest's proposed cost-of-service consists of \$1,851,913 of operation and maintenance expenses, \$5,370,219 of depreciation expenses, \$14,727,467 of return allowance (14.0 percent rate of return on equity based on a capital structure of 60 percent equity and 40 percent debt, and 7.0 percent cost of debt), \$7,032,306 of income taxes and \$1,003,661 of taxes other than income taxes. For year 1, MarkWest reflects a proposed rate base comprising gross plant investment of \$134,431,476, less accumulated depreciation of \$2,685,110, plus materials and supplies inventory of \$10,000, less accumulated deferred income taxes of \$261,127 for a total rate base of \$131,495,239.

24. The proposed maximum IT and authorized overrun rate is \$0.1288 per Dth, a 100 percent load factor derivative of the FT-1 rate. MarkWest is proposing to recover its fuel gas, including lost and unaccounted for gas, in-kind from shippers and MarkWest proposes to post periodic changes to the retention percentage on its electronic bulletin board. In addition, section 18 of the pro forma tariff provides that an annual true-up adjustment filing will be made to ensure that actual fuel gas will be reconciled and accurately recovered.

25. The Commission has reviewed the proposed cost-of-service and proposed initial rates and generally finds them reasonable for a new pipeline entity, such as MarkWest, subject to the modifications and conditions discussed below.

#### *Return on Equity and Capital Structure*

26. MarkWest proposes a capital structure of 60 percent equity and 40 percent debt. The overall rate of return of 11.2 percent incorporates a return on equity (ROE) of 14.0 percent, based upon the project's business and financial risk. MarkWest states that the proposed 14 percent ROE is consistent with the risks facing MarkWest as a new pipeline project and is in line with equity returns granted by the Commission to other new pipeline projects.

27. For new pipelines, the Commission has approved equity returns of up to 14 percent as long as the equity component of the capitalization is no more than 50 percent.<sup>11</sup> In *Ingleside Energy Center, LLC*,<sup>12</sup> the Commission approved the pipeline's proposed 14 percent return on equity, but required the pipeline to adopt a capital structure that included at least 50 percent debt instead of the pipeline's proposed 30 percent debt capitalization. Here, MarkWest has proposed to establish its rates based only on a 40 percent debt capitalization. With such a thin debt ratio, everything else being equal, MarkWest will not face the same level of financial risks as any of the new pipelines that have been previously granted a 14 percent ROE. Imputing a capitalization containing such a large equity ratio is more costly to ratepayers, since equity financing is typically more costly than debt financing, and also because the interest on indebtedness is

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<sup>11</sup> See, e.g., *Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081, at P 33 (2005) (approving a 14 percent return on equity based on 50 percent debt and 50 percent equity ratios); *Gulfstream Natural Gas System, L.L.C.*, 105 FERC ¶ 61,052, at n. 26 (2003) and 91 FERC ¶ 61,119, at 61,463 (2000) (approving 14 percent return on equity based on 70 percent debt and 30 percent equity ratios); *Georgia Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271, at 62,054 (2002) (approving 14 percent return on equity based on 70 percent debt and 30 percent equity ratios).

<sup>12</sup> 112 FERC ¶ 61,101, at 61,653 (2005).

tax deductible.<sup>13</sup> Accordingly, the Commission will approve MarkWest's proposed 14 percent ROE, but will require that it design its cost-based rates on a capital structure that includes at least 50 percent debt. The resulting overall rate of return is 10.5 percent.

#### *Interruptible Services Revenue Crediting*

28. MarkWest has designed its recourse rates without an allocation of costs to Rate Schedule IT service or a provision requiring the crediting of Rate Schedule IT revenues to shippers. MarkWest states this is because all firm shippers have elected Rate Schedule FT-2 where service is provided under a volumetric rate. Therefore, it explains that to the extent a unit of service flows under Rate Schedule IT rather than under Rate Schedule FT-2, MarkWest recovers the fee for that unit of service only once and that by not flowing, the Rate Schedule FT-2 shipper has avoided paying for the unit of capacity used to render the IT service. MarkWest claims that by designing the Rate Schedule FT-2 rate at full system capacity, costs are implicitly allocated to every unit that flows on the system, whether that unit is Rate Schedule FT-2 or Rate Schedule IT, and, therefore, no allocation or crediting is appropriate. MarkWest states that if and when it contracts with Rate Schedule FT-1 shippers paying a fixed reservation fee, this issue could be revisited.

29. The Commission's general policy regarding new interruptible services requires the pipeline to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers or to allocate costs and volumes to these services.<sup>14</sup> The rationale underlying the crediting aspect of this policy is twofold. First, crediting revenues generated by interruptible service keeps pipeline revenues within the projected cost-of-service. Second, crediting these revenues reduces what customers pay for service, effectively lowering their rates to the level that would result if costs were allocated to interruptible services. We agree with MarkWest that application of this policy here, where firm shippers are only taking service under Rate Schedule FT-2 and are only paying for the capacity they use, is not applicable. However, the Commission emphasizes this determination is based on the unique situation presented by MarkWest in its application and may be revisited if circumstances change.

#### *Fuel*

30. MarkWest is proposing to recover its fuel gas, including lost and unaccounted for gas, in-kind from shippers pursuant to section 18 of its General Terms and Conditions

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<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., *Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

(GT&C). Section 18 provides that the total fuel reimbursement percentage (FRP) will be the sum of a base FRP and a FRP true-up adjustment percentage. The base FRP will be posted on MarkWest's website and postings will be updated no less than once per quarter. An annual true-up adjustment filing will be made in November of each year that MarkWest states will ensure that actual fuel and lost and unaccounted for gas will be reconciled and accurately recovered. MarkWest does not state an initial base FRP on its Statement of Rates and Charges.<sup>15</sup>

31. MarkWest's proposed fuel reimbursement mechanism will allow MarkWest to set the base FRP without any review or comment by its shippers and without prior Commission approval. The Commission has not permitted pipelines to impose fuel charges on shippers without making a tariff filing and providing notice and the opportunity to participate in the proceedings.<sup>16</sup> For these reasons, we will require that MarkWest file an initial base FRP with supporting documents and revise section 18 to provide that any subsequent base FRP change be filed with the Commission.

32. We also note that Commission policy prohibits a pipeline from shifting costs associated with its negotiated rate shippers to recourse rate shippers. Consistent with this policy, the Commission has held that when a pipeline negotiates fuel retainage percentage factors with a negotiated rate shipper, the pipeline must bear the risk of underrecovery of its fuel costs and cannot shift unrecovered fuel costs to its recourse rate shippers.<sup>17</sup> Accordingly, in any fuel proceeding MarkWest will have the burden of showing that its proposal does not shift any unrecovered fuel costs due to the fuel cap in its negotiated rate agreements to its recourse rate shippers.

#### *Rate Changes and Three-Year Filing Requirement*

33. If MarkWest desires to make any other rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c). In that filing, MarkWest will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are constructed and placed in service, MarkWest must make a NGA section 4 filing to change its rates to reflect any revised construction and operating costs.

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<sup>15</sup> Pro Forma Original Sheet No. 5.

<sup>16</sup> See, e.g., *High Island Offshore System, L.L.C.*, 112 FERC ¶ 61,050, at P 151 (2005); *Williston Basin Interstate Pipeline Co.*, 102 FERC ¶ 61,322 (2003).

<sup>17</sup> *Algonquin Gas Transmission, LLC*, 124 FERC ¶ 61,195 (2008).

34. Consistent with Commission precedent, the Commission will require MarkWest to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.<sup>18</sup> In its filing, the projected units of service should be no lower than those upon which MarkWest's approved initial 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.<sup>19</sup> After reviewing the data, the Commission will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, MarkWest 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.

## 2. Pro Forma Tariff Issues

35. MarkWest states that its pro forma tariff has been modeled after provisions of other Commission-approved tariffs and is designed to provide open access, non-discriminatory transportation service in accordance with Commission policy and precedent.

### *Rate Schedule FT-2*

36. Rate Schedule FT-2 is a production-based firm service designed to accommodate the needs of Woodford Shale producers. The principal requirement of FT-2 service is that shippers must commit a portion of their Woodford Shale production to MarkWest in exchange for volumetric service with no reservation charge. While FT-2 service was designed to meet the needs of producers, there is no requirement that shippers utilize this service. Rate Schedule FT-1 service is available to all shippers. The maximum Firm Quantity Charge under Rate Schedule FT-2 is equal to the 100 percent equivalent of the FT-1 rate. Because there is no reservation fee for FT-2 service, the service is not eligible for capacity release.

37. MarkWest's proposed FT-2 service has two production commitment options, both of which are based on the term of the contract. Under Option 1, the shipper commits all of its Woodford production for the term of the FT-2 contract, net of any production committed under a pre-existing agreement. Under Option 2, the shipper commits a specified portion of its Woodford production for the term of the FT-2 contract. If a shipper under Option 2 fails to ship at least 75 percent of its maximum daily quantity during any calendar quarter, MarkWest shall have the right to reduce that shipper's MDQ

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<sup>18</sup> See, e.g., *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 133 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 52 (2005).

<sup>19</sup> 18 C.F.R. § 154.313 (2008).

to a level equal to 90 percent of the shipper's current MDQ. MarkWest states that both firm shippers presently committed to the project have selected FT-2 service.

38. MarkWest states that while FT-2-type services are more common for offshore pipelines, the customer benefits apply equally for onshore service. It explains that its proposed volumetric firm service will help shippers mitigate the financial risk of holding firm capacity.

39. The Commission has approved a variety of rate schedules with one-part volumetric rates similar to that proposed by MarkWest for offshore pipelines in which the shipper commits its offshore production in return for firm volumetric rates.<sup>20</sup> In approving those proposals, we determined that such an alternative firm transportation rate schedule has features to meet the needs of shippers and will promote the development of substantial new reserves in offshore waters. Here, MarkWest provided an opportunity during its open season for shippers to choose either FT-1 or FT-2 service. In addition, Rate Schedule FT-2 rates are designed on a 100 percent load factor derivative of the FT-1 maximum rates. As proposed, FT-2 service will accommodate the needs of producers/shippers by providing the option of a volumetric rate that places the risk and uncertainty of throughput levels and related fixed cost recovery on MarkWest. This will facilitate the development of substantial new reserves in southeastern Oklahoma. We also note that no party objects to MarkWest's proposed rate structure. For these reasons, we will approve MarkWest's proposed FT-2 Rate Schedule.

#### *Section 6 – Procedures for Requesting Service*

40. Section 6.4 states that if requests for firm service exceed available capacity, then capacity will be allocated based: 1) on highest bid, or 2) pro rata among equal bids. MarkWest states in its August 26, 2008 data response that it proposes to add new language to section 6.4.1 to clarify that it will determine the highest bid based on the highest economic value of the bids submitted, using a net present value determination. MarkWest is directed to revise its tariff as proposed in its data response.

#### *Section 7 – Creditworthiness*

41. Sections 7.3.2 (a) and (b) provide that a shipper can be deemed creditworthy if it prepays for service or provides an irrevocable letter of credit for 12 months of service. Section 7.6.2 provides that a shipper that no longer meets MarkWest's creditworthiness requirements may continue to receive service if it provides a cash security deposit for reservation and commodity charges for 12 months of service.

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<sup>20</sup> See, e.g., *High Island Offshore System, L.L.C.*, 88 FERC ¶ 61,266 (1999); *Shell Gas Pipeline Co.*, 76 FERC ¶ 61,126 (1996).

42. The Commission's longstanding policy has been to require no more than the equivalent of three months' worth of reservation charges as security for a shipper that has been found to be non-creditworthy. The Commission has found that this amount reasonably balances the shippers' right to continued service with the pipeline's risk in remarketing the capacity.<sup>21</sup> Therefore, the Commission finds that MarkWest's proposal to require a shipper to prepay for service or provide an irrevocable letter of credit for 12 months in order to be deemed creditworthy and to require security equal to twelve months of service charges for shippers found to be non-creditworthy is excessive. MarkWest is directed to revise its tariff to require security for up to three months of service charges as required by Commission policy.

43. Section 7.5.2 states that MarkWest may terminate service if a shipper has not satisfied the requirements in section 7 of its GT&C by the end of the specific prior notice period and if a shipper fails to provide adequate assurances of future performance consistent with the requirements of section 7 of its GT&C. Section 7.5.2 must be revised to conform to the requirement in section 154.602 of the Commission's regulations that pipelines must give at least 30 days' notice to the customer and the Commission before terminating a service agreement.<sup>22</sup>

*Sections 9 and 10 – Scheduling and Curtailment Priority*

44. Section 9.1 provides a higher scheduling priority to authorized overrun service under Rate Schedules FT-1 and FT-2 as compared to interruptible service under Rate Schedule IT. Section 10.2 provides that service under Rate Schedule IT will be curtailed before authorized overrun service. The Commission considers authorized overrun to be an interruptible service and requires pipelines to accord the same scheduling and curtailment priorities to interruptible and overrun services.<sup>23</sup> Although authorized FT-1 and FT-2 overrun service is nominated under a firm service contract, the service is provided for nominations in excess of the firm shipper's contract demand and is only provided if capacity is available. Further, firm shippers do not pay a reservation charge for authorized overrun service. Rather, the authorized overrun service rate is a charge equal to the rate paid by MarkWest's interruptible transportation customers. Therefore, MarkWest is directed to revise sections 9.1 and 10.2 of its GT&C to provide the same priority to authorized overrun service and interruptible service.

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<sup>21</sup> *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005).

<sup>22</sup> 18 C.F.R. § 154.602 (2008).

<sup>23</sup> See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 111 (2008); *Cheniere Creole Trail Pipeline*, 121 FERC ¶ 61,071, at P 39 (2007).

45. Section 10.2.1 states that scheduled quantities other than those under b) through e) would be curtailed first. Section 10.2 does not contain any sections b) through e). In addition, it is not clear what other quantities would be scheduled since sections 10.2.2 and 10.2.3 address quantities scheduled under Rate Schedules FT-1, FT-2 and IT. Therefore, MarkWest is directed to delete 10.2.1 or revise it to explain what other quantities would be scheduled and to clarify the reference to b) through e).

*Section 13 – Imbalances and Overruns*

46. Section 13.1 states that MarkWest may, but is not obligated to, enter into Operational Balancing Agreements (OBAs), which address imbalances at various points on its system. In Order No. 587-G,<sup>24</sup> the Commission adopted section 284.12(b)(2)(i) of its regulations requiring each interstate pipeline to enter into operational balancing agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline. MarkWest will be required to comply fully with this regulation once in service and is directed to revise section 13.1 of its GT&C accordingly.

47. MarkWest states in its August 26, 2008 data response that it proposes to add section 13.2.3 to its GT&C in order to clarify that the recovery of the cost of the commodity in its cashout mechanism when a shipper's receipts are less than deliveries will be based on the highest daily price reported for "CENTERPOINT, EAST" as published by *Gas Daily* during the billing month that the imbalance occurred. The Commission has found that the use of a daily index price in determining a shipper's imbalance penalty rate can be unnecessarily punitive since the daily highest or lowest price can greatly vary from the actual cost of the gas when the imbalance occurred and may unduly increase the penalties for imbalances, which is contrary to Order No. 637. Accordingly, the Commission has required penalties to be based on a percentage of the average weekly price for the appropriate geographic area.<sup>25</sup> Therefore, MarkWest is directed to base the fee for a shipper's receipts that are less than its deliveries as a percentage of the average weekly price for the appropriate geographic area.

*Section 15 – Negotiated Rates*

48. MarkWest's pro forma tariff includes a provision in GT&C section 15 that would allow MarkWest to enter into negotiated rate agreements with shippers. Section 15 states that MarkWest will file with the Commission all negotiated rate service agreements or a

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<sup>24</sup> *Standards For Business Practices Of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. and Regs. ¶ 31,062 (Apr. 16, 1998), *order on reh'g*, Order No. 587-I, FERC Stats. and Regs. ¶ 31,067 (Sept. 29, 1998).

<sup>25</sup> *See, e.g., Texas Gas Transmission Corp.*, 97 FERC ¶ 61,349 (2001).

tariff sheet stating the name of the shipper, the rate schedule, the receipt and delivery points, the contract quantity, and, where applicable, the exact formula underlying a negotiated rate. The proposed tariff also states that to the extent any negotiated rate agreement deviates in any material aspect from the applicable form-of-service agreement in MarkWest's tariff the agreement will be filed with the Commission. Section 15 also requires that MarkWest will maintain separate records for all revenues associated with negotiated rate agreements and maintain and provide separately identified and totaled volume, billing determinant, rate or surcharge component, and revenue accounting information for its negotiated rate arrangements in any general or limited rate change filing that it makes.

49. We find that Mark West's proposed tariff language in section 15 concerning negotiated rate authority is consistent with the Alternative Rate Policy Statement<sup>26</sup> and our decision in *NorAm Gas Transmission Company*.<sup>27</sup> Consistent with this authority, MarkWest must file either its negotiated rate contracts or numbered tariff sheets prior to the commencement of service and must file any service agreement that includes non-conforming provisions consistent with section 154.112(b) of the Commission's regulations.

#### *Section 26 – NAESB Standards*

50. MarkWest states in GT&C section 26 that they adopt or exceed all of the Business Practice and Electronic Communication Standards required by the Commission in 18 C.F.R. Section 284.12(b) in accordance with Order No. 587, et. al. and NAESB Version 1.7. The Reference Table in Exhibit P in MarkWest's application states that NAESB standards 1.3.1, 1.3.26, 1.3.32 and 2.3.9 are incorporated by reference. However, these standards are not included in section 26. In addition, MarkWest has not complied with NAESB standards 2.3.5, 2.3.6, 2.3.40, 3.3.15, and 3.3.17 through 3.3.19. MarkWest is directed to either incorporate these standards by reference or add them to its tariff verbatim. In addition, although MarkWest has complied with standards 5.3.35 and 5.3.38, they have done so only with regards to notices for OFOs. These standards also accommodate communications with regards to intraday bumps and other critical notices provided by the pipeline. Therefore, MarkWest is directed to revise its tariff to

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<sup>26</sup> *Alternative 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 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

<sup>27</sup> 77 FERC ¶ 61,011 (1996).

accommodate communications with regards to intraday bumps and other critical notices as stated in standards 5.3.35 and 5.3.38.

*Section 27 – Impairment of Deliveries/Force Majeure*

51. Section 27.1 of the GT&C states that MarkWest “shall have the right to interrupt or curtail service from time to time to perform routine repair, maintenance, and other construction or testing procedures on Transporter’s System or to comply with applicable regulatory requirements.” Section 27.2 provides that service may be interrupted or curtailed for reasons of force majeure and section 27.4 provides that if due to force majeure MarkWest is unable to deliver any portion of a shipper’s Maximum Daily Quantity for a period greater than 10 days, MarkWest will not charge the applicable reservation charge for subsequent quantities not delivered within the shipper’s MDQ.

52. MarkWest’s proposal regarding interruption of service does not comply with Commission policy in two respects. The Commission has found that curtailment is only applicable in an emergency situation or when an unexpected capacity loss occurs after scheduling.<sup>28</sup> Because routine repair or maintenance is not an emergency situation or an unexpected loss of capacity, we will require MarkWest to modify its tariff to clarify that routine repair and maintenance should be planned through scheduling and should not disrupt confirmed service. Second, the Commission requires that pipelines provide full reservation charge credits for all scheduled gas not delivered to shippers due to a non-force majeure event.<sup>29</sup> Therefore, MarkWest must revise its tariff to provide for full reservation charge credits for all scheduled gas not delivered in non-force majeure situations.<sup>30</sup> MarkWest’s proposal to provide for full reservation charge credits after a short grace period of 10 days for gas not delivered in force majeure situations is consistent with Commission policy and is approved.

*Section 28 – Liability*

53. Sections 28.1 and 28.2 of Mark West’s GT&C provide that if service is interrupted MarkWest shall not be liable for damages of any kind, including consequential damages, to any shipper or other party. Section 28.3 states that, except as specifically required

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<sup>28</sup> See, e.g., *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119, at 61,470 (2000); *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123, at 61,663 (1996).

<sup>29</sup> See, e.g., *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310 (2004).

<sup>30</sup> The Commission’s policy on reservation charge credits is not applicable to service under Rate Schedule FT-2 because there is no reservation fee for this service.

herein, any remedies or damages arising from a breach of an FT or IT service agreement will be limited to direct damages except those that result from a “party’s gross negligence or willful misconduct of its managerial staff or senior supervisory personnel.”

54. The Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs.<sup>31</sup> The Commission, however, has allowed pipelines to limit their liability for negligence to direct damages, so that they are only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, undue discrimination or willful misconduct or bad faith.<sup>32</sup> Sections 28.1 and 28.2 would improperly insulate MarkWest from all damages, direct as well as indirect, for its own simple or gross negligence. These provisions also appear at odds with section 28.3 which provide that MarkWest will be liable for direct damages arising from its own simple negligence. MarkWest is directed to revise its liability provisions to comply with Commission policy. In addition, MarkWest must either remove or explain the appropriateness of the language which limits indirect, consequential, or punitive damages to acts of “gross negligence or willful misconduct of its managerial staff or senior supervisory staff.”

*Section 29 – Defaults and Remedies*

55. Section 29.2 of MarkWest’s GT&C states that upon the occurrence of an Event of Default (as defined in section 29.1), MarkWest may terminate an FT or IT agreement upon ten days prior written notice to the shipper. Section 29.2 must be revised to conform to the requirement in section 154.602 of the Commission’s regulations that requires pipelines to give at least 30 days’ notice to the customer and the Commission before terminating a service agreement.<sup>33</sup>

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<sup>31</sup> See, e.g., *Gulf South Pipeline Co.*, 98 FERC ¶ 61,278, at 62,182 n. 56 (2002); *Williams Pipe Line Co.*, 88 FERC ¶ 61,014, at 61,040 and n. 31 (1999); *Natural Gas Pipeline Co.*, 39 FERC ¶ 61,153, at 61,599 (1987).

<sup>32</sup> *ANR Pipeline Company*, 100 FERC ¶ 61,132, at 61,505 (2002).

<sup>33</sup> 18 C.F.R. §154.602 (2008).

*Waivers*EDM

56. MarkWest requests a limited waiver in the form of an extension of time to comply with the NAESB standards related to maintaining an electronic delivery mechanism (EDM). MarkWest states it would postpone implementation of the EDM standards until 90 days following receipt of a request to send information via EDM. MarkWest states the Commission has previously granted waiver of the EDM-related standards to interstate pipelines that have not received requests to send information via EDM and do not expect such requests.<sup>34</sup> MarkWest states its Internet website will support and implement the NAESB standards related to informational postings that the Commission has required of other small pipelines and that its website will include links to capacity information, the index of customers, notices, organization charts, tariff and transactional reporting.

57. The NAESB Version 1.7 EDM standards relate to electronic communication through ANSI ASC X12 computer-to-computer electronic data interchange of information (EDI/EDM) and standardized flat file electronic data interchange of information (FF/EDM), as well as standards relating to the posting of information on the pipeline's web site and communications over the Internet. The Commission has previously granted pipelines a conditional extension of time to implement the EDI/EDM and FF/EDM data sets up to 90 days from the date any person first requests use of a NAESB data set that the pipeline does not currently support.<sup>35</sup> Consistent with these rulings, we will grant MarkWest a conditional extension of the EDI/EDM and FF/EDM requirements as set forth in NAESB Version 1.7 for up to 90 days from the date any person first requests use of a NAESB data set that MarkWest does not currently support. Although we are granting a waiver of the requirement to provide EDI/EDM and EBB/EDM, MarkWest will still be required to develop an Informational Postings Web Site and to incorporate the necessary NAESB standards<sup>36</sup> associated with that requirement.<sup>37</sup>

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<sup>34</sup> *Citing Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 (2005); *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 48 (2006); *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

<sup>35</sup> *Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069, at 61,417 (2008).

<sup>36</sup> These include standards 4.3.5, 4.3.7, 4.3.8, 4.3.16 through 4.3.18, 4.3.20, 4.3.22 through 4.3.41 and 4.3.48.

<sup>37</sup> *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at 61,473 (2007).

### Pooling and Title Transfer Tracking

58. MarkWest requests a limited waiver of the NAESB standards related to pooling and Title Transfer Tracking. MarkWest states that as a short pipeline connector system with only one receipt point and two delivery points that are in the same station yard it expects that pooling will occur upstream of the point of receipt into its pipeline system. Thus, MarkWest requests a limited waiver to postpone implementation of the NAESB standards related to pooling and title transfer tracking until 90 days following receipt of a shipper's request for such service. MarkWest states that the Commission has granted such a waiver to other similar pipeline systems.<sup>38</sup>

59. The Commission agrees with MarkWest's analysis with regard to pooling and will not require MarkWest to incorporate the appropriate NAESB provisions related to pooling in its tariff at this time. However, NAESB standard 1.3.17 requires that a pipeline must offer pooling if asked to do so. If pooling is requested in the future, MarkWest would have to file a pooling provision proposal under NGA section 4 to become part of its tariff.<sup>39</sup> The Commission will not grant MarkWest a waiver of its title transfer tracking requirements. The pipeline's only obligation with regard to title transfers is to process nominations and confirmations using its existing nomination system.<sup>40</sup> MarkWest has not provided sufficient justification as to why it can not perform title transfer tracking functions during the nomination process using its existing nomination procedures. Although NAESB's Title Transfer Tracking standards are principally applied at pooling points (which MarkWest states will be impractical on the new pipeline), the standards require pipelines to accommodate Title Transfer Tracking at no less than one location. Therefore, the Commission will require MarkWest to incorporate NAESB Standards 1.3.64 through 1.3.74, 1.3.76, and 1.3.77, which are related to Title Transfer Tracking.

### Segmentation

60. MarkWest requests a waiver of section 284.7(d) of the Commission's regulations that requires natural gas companies to allow shippers to segment their firm capacity paths to the extent such segmentation is operationally feasible. MarkWest asserts that the configuration of its system, with one receipt point and two delivery points located in

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<sup>38</sup> *Citing TransUnion Interstate Pipeline, L.P.*, Letter Order, Docket No. RP06-217-000 (Mar. 9, 2006).

<sup>39</sup> *See, e.g., Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at 61,473 (2007); *Arkansas Western Pipeline Co.*, 78 FERC ¶ 61,250 (1997).

<sup>40</sup> Order No. 587-Q at P 13.

close proximity to one another, makes segmentation operationally infeasible. MarkWest states that the Commission has granted waiver of its segmentation requirements to other small pipelines when it is not operationally feasible for the pipeline.<sup>41</sup>

61. We agree that segmentation is not currently feasible on MarkWest's system. Consistent with prior Commission rulings,<sup>42</sup> we will approve MarkWest's request for a waiver of the segmentation requirements under section 284.7(d).

#### **IV. Environmental Analysis**

62. On October 5, 2007, MarkWest submitted a request to implement the Commission's Pre-Filing Process in compliance with 18 C.F.R. 157.21(b). Our staff approved MarkWest's request on October 18, 2007.

63. On January 18, 2008, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Arkoma Connector Pipeline Project and Request for Comments on Environmental Issues (NOI). Because of facility modifications and additions that were identified by MarkWest subsequent to the issuance of the NOI, we issued a Supplemental NOI for the proposed project on April 9, 2008. We received comment letters from the State of Oklahoma Water Resources Board (OWRB), Oklahoma Archeological Survey (OAS), Natural Resources Conservation Service (NRCS), Oklahoma Natural Heritage Inventory (ONHI), Bureau of Land Management (BLM), Ms. Whittington, and Lucky Base. Our staff, in cooperation with the U.S. Fish and Wildlife Service (USFWS) and NRCS, prepared an environmental assessment (EA) of MarkWest's proposal. The EA addresses geology, soils, water resources, fisheries, wetlands, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air quality, noise, reliability, safety, cumulative impacts, and alternatives, as well as the concerns expressed in the comment letters.

64. The OWRB was concerned about the potential impacts to water supplies for numerous communities, businesses, and individuals associated with the crossing of Clear Boggy Creek and Muddy Boggy Creek. The OWRB asked MarkWest to consider avoiding as many stream crossings as possible to prevent potential environmental problems that could be expected from normal construction activities or accidents. As detailed in sections 1.6.2, 1.6.3, and 2.2.2 of the EA, Clear Boggy and Muddy Boggy Creeks would be crossed using the horizontal directional drilling method (HDD), which would involve no surface trench excavation, thereby avoiding construction-related impacts to those water resources. A total of ten HDD waterbody crossings would be

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<sup>41</sup> *Citing Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

<sup>42</sup> *See, e.g., Gulf States Transmission Corp.*, 96 FERC ¶ 61,159, at 61,693 (2001).

involved with the project's construction, thereby minimizing the number of stream crossings that would be constructed using conventional methods.

65. The OAS stated that in its opinion, cultural resources inventories would have to be undertaken to assess the effects of the proposed pipeline on cultural resources. As described in section 2.8 of the EA, MarkWest conducted a cultural resources survey for 36.5 miles of the proposed pipeline alignment within a 300-foot-wide study corridor. Because thirteen and a half miles of the proposed pipeline corridor could not be surveyed due to lack of landowner access permission, the staff recommended that prior to construction, MarkWest file cultural resource survey and evaluation reports, any necessary treatment plans, and the Oklahoma State Historic Preservation Officer's and State Archaeologist's comments on the reports and plans, for review and approval of the Director of the Office of Energy Projects (*see* Appendix, Environmental Condition No. 12).

66. The NRCS stated that it has come to its attention that the proposed project would cross property under federal easement that it administers. Since the receipt of the NRCS' comment, MarkWest has changed its route to avoid the NRCS-administered land.

67. The ONHI advised of the presence of the federally listed endangered American burying beetle (ABB) within the proposed project area and recommended that a survey be conducted to determine the presence or absence of the ABB in the immediate project area in accordance with the survey protocol of the USFWS. The issues pertaining to the federally listed endangered ABB are addressed in section 2.5 of the EA.

68. The BLM stated that there are split estate federal minerals in the project area, but it did not elaborate. The staff contacted the BLM which indicated that the BLM's comment must have been made in error because there are no split estate federal minerals in Coal, Bryan, or Atoka Counties, Oklahoma.

69. Ms. Whittington objected to the proposed project because she already has two pipelines on her property. Ms. Whittington pointed out that the proposed pipeline is supposed to be located on the west side of the two existing pipelines, but the survey stakes are located on the east side. Ms. Whittington was also concerned about restoration of the portion of the project's easement on her property because of inadequate restoration of the two existing pipeline easements. As stated in section 2.6 of the EA, Ms. Whittington's concerns for the restoration of the project's right-of-way on her property are warranted due to the apparently poor restoration of adjacent pipeline rights-of-way. The existing Enogex LLC pipelines on her property are non-jurisdictional and, therefore, any issues associated with the adequacy of ROW restoration on those facilities are beyond the scope of the EA. MarkWest's proposed project, however, is within the Commission's jurisdiction. MarkWest has committed to implement the erosion control and restoration requirements specified in the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and

Mitigation Procedures, which require, among other things, the re-establishment of pre-construction contours, installation of erosion controls, and successful restoration of all disturbed areas.

70. With regard to Ms. Whittington's concern about the planned construction of the project's pipeline as the third pipeline on her property, it should be noted that the Commission generally prefers the co-location of new pipelines adjacent to existing pipelines to minimize environmental impacts. MarkWest stated in a filing dated July 18, 2008, that the proposed pipeline would cross Ms. Whittington's property between mileposts 25.54 and 26.10 parallel to and west of the two existing pipelines on her property. MarkWest's filed alignment sheets clearly show the proposed pipeline route to the west of the existing pipeline right-of-way. MarkWest stated that the survey stakes observed on the east of the existing pipelines are not MarkWest's and are not part of the proposed project. Under these circumstances, the impact on Ms. Whittington's property will not be significant.

71. Lucky Base advised that TransCanada Pipelines Limited (TransCanada) is planning to construct its Keystone XL Pipeline Project southwest of and adjacent to MarkWest's proposed project on Lucky Base property. Lucky Base indicated that TransCanada has already approached Lucky Base for an easement through the property and stated that MarkWest's proposed pipeline would be located about 50 feet to the west of an existing pipeline through a peach orchard and less than 60 feet from their water well and hen house. If TransCanada's pipeline would then be located another 50 feet to the west, it would be routed through the water well and would be located immediately adjacent to their residence. In addition, Lucky Base stated that the proposed pipeline would interfere with a barn, a new corral, holding pens, and a cattle shoot. Lucky Base requested that a reroute be considered to the northeast of the existing pipeline due to the limitations of that corner of the property and to avoid impacts to the peach orchard and aboveground structures on their property.

72. As described in section 2.6 of the EA, in response to Lucky Base's comment letter MarkWest proposed to bore at least five feet under the existing orchard, resulting in no surface disturbance within the orchard and eliminating the need to remove any of the existing peach trees. MarkWest also committed to make an exception to the prohibition against trees within the permanent ROW. We believe that MarkWest's proposal to bore under Lucky Base's peach orchard is a reasonable alternative to trenching through it because the effective root zone depth for peach trees is two feet, and therefore it is unlikely that the pipeline would adversely affect the orchard. TransCanada's Keystone XL Pipeline Project would be a crude oil pipeline that would not be subject to the Commission's jurisdiction and, therefore, an analysis of the environmental impacts related to the construction of that pipeline project is beyond the scope of the EA. All other substantive comments were addressed by our staff in the EA.

73. On the basis of the information in MarkWest's biological survey reports, discussions with the USFWS, and analysis of the potential effects of the proposed action as reported in the EA, staff determined that with compensatory mitigation approved by the USFWS, the proposed project is not likely to adversely affect the ABB. On August 13, 2008, we issued the EA for comment. Staff received e-mail correspondence on August 22, 2008, from the USFWS advising us of a letter that it sent to MarkWest advising MarkWest of the need to initiate formal consultation with the USFWS in accordance with section 7 of the Endangered Species Act (ESA) to address impacts on the ABB. By letter dated August 27, 2008, we initiated formal consultation with the USFWS. Consequently, the order includes a condition (Environmental Condition No. 16) that precludes MarkWest from beginning construction of the proposed facilities until the Commission has completed the necessary ESA consultation.

74. We also received a comment letter on the EA from the Oklahoma Department of Agriculture, Food and Forestry (ODAFF). In its letter dated September 12, 2008, the ODAFF focused primarily on impacts to forested areas and recommended that the project and future projects should attempt to minimize the loss of forest cover while meeting project objectives.

75. Because pipelines are linear features, they typically traverse a variety of vegetation types. While avoidance of forest clearing is preferred, it must be recognized that routing around features adds to the length of the pipeline. Each additional mile of pipeline adds almost 12 acres of total impact to the project. The increase in impacts to other resources must be balanced against the impact to forested habitat.

76. As described in sections 2.2, 2.3, and 2.6 of the EA, construction of the proposed project would impact about 216.6 acres of forest. This total represents about 30 percent of the total area affected by the project. More than half of the 216.6 acres would be allowed to revegetate following construction. The EA appropriately identifies this as a long-term impact due to the projected time required for restoration to the previous condition. The remaining width of the construction right-of-way would be maintained for the life of the project in an herbaceous or scrub-shrub condition and would be considered a permanent conversion of about 95.5 acres of forested habitat. We consider the permanent and long-term forested impacts for the proposed project to be minimal given that the project is 50.1 miles in length.

77. The ODAFF also commented on the possible cumulative impacts on forested habitat from multiple pipelines traversing the same area. Section 2.11 of the EA discusses the cumulative impacts to the appropriate resources, including vegetation. It discusses other proposed and existing pipelines that are proximal to the proposed project. In short, about 65 percent of the proposed pipeline corridor is not co-located with other utility corridors and would not necessarily generate impacts that should be considered cumulatively. In addition, not all of the 18 miles that are co-located would cross forested

habitat. Therefore, we do not consider the cumulative impacts to forested habitat to be significant.

78. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with MarkWest's application and supplements, including responses to staff's data request, MarkWest's proposed mitigation measures, and the additional mitigation measures recommended by staff, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

79. 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 operation of facilities approved by this Commission.<sup>43</sup>

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to MarkWest authorizing it to construct and operate natural gas facilities as described more fully in this order and in the application as supplemented.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

- (1) MarkWest completing the facilities described herein and making them available for service within one year of the issuance of this order pursuant to section 157.20 of the Commission's regulations;

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<sup>43</sup> See, e.g., *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988).

- (2) MarkWest's compliance with all applicable Commission regulations, including, but not limited to, paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations; MarkWest's compliance with the environmental conditions listed in the appendix to this order; and
- (3) MarkWest' execution of firm service agreements for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

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

(D) MarkWest is granted a blanket certificate under Part 157, Subpart F of the Commission's regulations.

(E) MarkWest is granted a blanket certificate under Part 284, Subpart G of the Commission's regulations and is authorized to provide firm and interruptible transportation services on an open-access and non-discriminatory basis under such certificate.

(F) MarkWest's initial rates and tariff are approved, as conditioned and modified herein in the body of this order.

(G) MarkWest must file actual tariff sheets that comply with the requirements contained in the body of this order not less than 60 days and not more than 90 days prior to the commencement of interstate service.

(H) Within three years after its in-service date, as discussed herein, MarkWest must make a filing to justify its existing cost-based firm and interruptible recourse rates. In the alternative, in lieu of such filing, MarkWest 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.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX****MarkWest Pioneer, L.L.C.  
Docket No. CP08-404-000****Environmental Conditions for the Arkoma Connector Pipeline**

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. MarkWest Pioneer, L.L.C. (MarkWest) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. MarkWest must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction, operation and abandonment of the project. This authority shall allow:
  - a. the modification of conditions of the 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, operation and abandonment.
3. **Prior to any construction**, MarkWest shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel shall be informed of the environmental inspector's authority and have been or shall be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

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

MarkWest's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. MarkWest'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. MarkWest shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each 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**, MarkWest shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how MarkWest would implement the mitigation measures required by the Order. MarkWest must file revisions to the plan as schedules change. The plan shall identify:
- a. how MarkWest would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of environmental inspectors assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who would receive copies of the appropriate material;
  - d. the training and instructions MarkWest would 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 MarkWest's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) MarkWest would 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. MarkWest shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the 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 the 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 the 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. MarkWest shall file updated status reports prepared by the environmental inspector with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) 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 the Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by MarkWest from other federal, state or local permitting agencies concerning instances of noncompliance, and MarkWest's response.
9. MarkWest shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, MarkWest shall mail the complaint procedures to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, MarkWest shall:

- i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - ii. instruct the landowners that, if they are not satisfied with the response, they should call MarkWest's Hotline; the letter should indicate how soon to expect a response; and
    - iii. instruct the landowners that, if they are still not satisfied with the response from MarkWest's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  - b. In addition, MarkWest shall include in its biweekly status report a copy of a table that contains the following information for each problem/concern:
    - i. the date of the call;
    - ii. the identification number from the certificated alignment sheets of the affected property;
    - iii. the description of the problem/concern; and
    - iv. an explanation of how and when the problem was resolved, would be resolved, or why it has not been resolved.
10. MarkWest 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 and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, MarkWest 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 MarkWest has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. MarkWest shall not implement any treatment plans/measures (including archaeological data recovery) or begin construction of facilities, or use of all staging, storage, or temporary work areas, and new or to-be-improved access roads until:

- a. MarkWest files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the Oklahoma State Historic Preservation Officer's and State Archaeologist's comments on the reports and plans; and
- b. the Director of OEP reviews and approves all cultural resources survey reports and plans and notifies MarkWest in writing that treatment plans/mitigation measures may be implemented or that construction may proceed.

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

13. If residents affected by noise emissions from the horizontal directional drill crossings of Dunford and Fronterhouse Creeks prefer noise mitigation over temporary housing, MarkWest shall make all reasonable efforts to control the noise to levels below an  $L_{dn}$  of 55 dBA at nearby noise sensitive areas (NSAs), including the use of a temporary noise barrier as described in the Hoover & Keith, Inc. noise analyses for the Project.
14. The compressor units to be constructed at the Origin Compressor Station shall be housed in a fully-enclosed building to reduce the predicted noise attributable to the Station at nearby NSAs. **Prior to construction of the compressor station,** MarkWest shall file with the Secretary a revised acoustic analysis that incorporates all previously proposed noise control measures as well as the compressor station building.
15. MarkWest shall make all reasonable efforts to assure its predicted noise levels from the Origin Compressor Station (with building enclosure) and the Midline Compressor Station facilities are not exceeded at nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days after placing the Origin and Midline Compressor Stations in service.** However, if the noise attributable to the operation of either the Origin Compressor Station or the Midline Compressor Station facilities at full load exceeds a day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at any nearby NSAs, MarkWest shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. MarkWest 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.**
16. MarkWest shall not begin construction until:

- a. the staff completes formal consultation with the U.S. Fish and Wildlife Service (USFWS);
- b. MarkWest has filed with the Secretary documentation that it has satisfied the USFWS' American burying beetle mitigation; and
- c. MarkWest has received written notification from the Director of OEP that construction or use of mitigation may begin.