

132 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

El Paso Natural Gas Company

Docket No. CP10-470-000

ORDER ISSUING CERTIFICATE

(Issued September 16, 2010)

1. On July 13, 2010, El Paso Natural Gas Company (El Paso) filed in Docket No. CP10-470-000 an application under section 7(c) of the Natural Gas Act (NGA) requesting authorization to replace pipeline facilities across the San Francisco River in Greenlee County, Arizona. The Commission grants the requested certificate, subject to the conditions set forth in this order.

I. Background and Proposal

2. El Paso is a natural gas company as defined under the NGA, engaged primarily in the business of transporting natural gas in interstate commerce subject to the jurisdiction of the Commission. El Paso operates facilities located in the States of Texas, New Mexico, Colorado, Arizona, and California.

3. El Paso proposes to replace segments of three lines where they cross the San Francisco River just south of the Town of Clifton in Greenlee County, Arizona. The three lines are the 6-inch diameter Station No. 7 to Morenci Line (Line No. 2006), the 6 inch-diameter Station No. 7 to Morenci Loop Line (Line No. 2007), and the 8 inch-diameter Station No. 7 to Morenci 2nd Loop Line (Line No. 2083). El Paso states that, due to erosion of the river bank, Line No. 2083 is currently exposed where it crosses the river and must be replaced to ensure continued safe operation of El Paso's pipeline system. El Paso states that although Line Nos. 2006 and 2007 are not currently exposed it proposes to replace them as part of the project to mitigate safety and service concerns related to the possibility of exposure in the future. The total cost of the replacement project is approximately \$3,700,600.

4. El Paso constructed Line Nos. 2006 and 2007 in the 1940s and Line No. 2083 in 1967 to serve the Phelps Dodge Corporation (now Freeport-McMoRan Corporation) mining facilities near the Town of Morenci, Arizona. Line Nos. 2006 and 2007 were replaced at the San Francisco River crossing in 1972 and 1984, respectively. Anticipating the need to replace Line No. 2083, El Paso attempted a horizontal

directional drill (HDD) under the San Francisco River in 2005. El Paso states that the HDD attempt was unsuccessful due to geological issues. Consequently, El Paso planned to replace the three lines using traditional open cut methods and to install permanent bank stabilization structures to mitigate erosion along the San Francisco River and prevent future exposure of the lines.

5. In 2007, El Paso initiated consultation with the United States Army Corps of Engineers (COE) and the United States Fish and Wildlife Service (FWS) to identify issues of concern with respect to the replacement project. El Paso originally planned to construct the replacement project pursuant to section 157.208 of the Commission's automatic blanket regulations, however, El Paso's consultations with the FWS and COE determined that the project location was within the designated critical habitat for the federally listed threatened loach minnow. Consequently, El Paso was unable to secure a "not likely to adversely affect" determination from the FWS at that time and the project could not be performed under El Paso's blanket certificate authority. Therefore, El Paso filed its application in this proceeding on July 13, 2010, after being in consultation with both the COE and the FWS since 2007 to develop a mutually agreed upon construction plan to allow the replacement of the lines while minimizing disturbance to the loach minnow habitat.

6. On July 31, 2010, the FWS issued its final Biological Opinion concluding that the proposed action is not likely to jeopardize the continued existence of the loach minnow or to destroy or adversely modify its designated critical habitat. On August 5, 2010, the COE issued its Clean Water Act section 404 permit for the crossing to El Paso. El Paso states that it also has received approval for the project from Freeport-McMoRan, the only landowner affected by the proposal.

7. El Paso proposes to replace: approximately 700 feet of the exposed Line No. 2083 where it crosses the San Francisco River; approximately 740 feet of Line No. 2006 (located about 25 feet south of Line No. 2083) with the replacement pipe to be located within the same trench as Line No. 2083; and approximately 700 feet of Line No. 2007 by means of a tie-in to the replaced Line No. 2006. The existing segment of the Line No. 2007 river crossing, located approximately 300 feet upstream of Line No. 2083, will be cut, capped, and abandoned in place. El Paso will tie Line No. 2007 into the replaced segment of Line No. 2006 on either side of the San Francisco River to create an integrated pipeline crossing through the new single 6-inch diameter pipe located within the Line No. 2083 trench. This pipeline integration will not affect the capacity of the crossing. Since the exposure of Line 2083 is due in part to the erosion of the east bank of the river, El Paso states that it will also install a permanent bank stabilization structure as part of the construction.

8. El Paso requests expedited approval of this replacement project because the exposed line poses a potential safety risk until it is replaced. El Paso states that if it does not receive authorization and begin construction by October 1, 2010, the line will have to

remain exposed for another year, until the next FWS-approved construction window in October 2011.

II. Notice, Interventions and Protests

9. The Secretary of the Commission issued notice of El Paso's application on July 15, 2010 and notice was published in the *Federal Register* on July 22, 2010 (75 Fed. Reg. 42,727). Both notices set a July 29, 2010 due date for comments, protests, and interventions.

10. El Paso Municipal Customer Group,¹ Tucson Electric Power Company and UNS Gas, Inc. (jointly known as Unisource), and Southwest Gas Corporation filed timely, unopposed motions to intervene in the proceeding.²

11. The National Park Service responded to the notice of El Paso's application on July 28, 2010, stating that it had no comments. On July 15, 2010, staff sent letters to 13 potentially affected Indian Tribes, inviting comments on the proposed action. No tribe filed a response.

12. On August 26, 2010, the Center for Biological Diversity (Center) filed a motion for late intervention and comments on the Environmental Assessment (EA) prepared for the proposed project (which was placed in the Commission's record for this application on August 16, 2010). Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.³ The Center's comments on the EA are discussed in the Environmental Analysis section of this order.⁴

¹ El Paso Municipal Customer Group is composed of the following distributor-customers of El Paso: the cities of Mesa, Safford, Benson, and Willcox, Arizona; the cities of Las Cruces, Socorro, and Deming, New Mexico; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2010).

³ 18 C.F.R. § 385.214(d) (2010).

⁴ Given our decision to grant late intervention, we need not address Center's arguments alleging deficiencies in the public notice process for this proceeding; we also note that no other entity filed comments nor asserted that its rights to participate were infringed.

III. Discussion

13. Since El Paso's application involves the construction of facilities for the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, the proposed construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

14. The Certificate Policy Statement provides guidance as to how the Commission evaluates proposals for certifying major new construction.⁵ 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. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. Under this policy, the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing expansion 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 effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

⁵ *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).

1. Threshold Requirement – No Financial Subsidies

16. El Paso's proposed construction, installation, and operation of the replacement pipeline facilities are designed to ensure pipeline integrity and safety and to maintain and enhance the effectiveness of its existing pipelines. The Certificate Policy Statement provides that increasing the rates of existing customers to pay for the costs of projects designed to improve their service, such as projects that replace existing capacity, improve reliability, or provide additional flexibility, does not constitute a subsidy.⁶ Since the proposed project will benefit El Paso's existing customers, no subsidy will result from the construction and installation of the proposed facilities or from the authorization requested, thus satisfying the no-subsidy standard.

2. Impact on Existing Customers, Existing Pipelines and Their Customers, and Landowners

17. The project will have minimal adverse impacts. It will not adversely affect existing El Paso shippers and will, in fact, enhance the system. Nor will the replacement project adversely affect competing pipelines or their captive customers. Finally, there will be minimal landowner impacts and the one affected landowner has given its approval of the project. Construction of the proposed project not only ensures pipeline integrity and safety but will also provide additional environmental benefits. Concurrent replacement and consolidation of the pipeline segments will reduce El Paso's need to disturb the San Francisco River and loach minnow habitat to a single instance. The integration of Line Nos. 2006 and 2007 into a single pipeline segment will eliminate the need for an additional construction replacement project upstream. The installation of bank stabilization structures will help to prevent future erosion and eventual exposure of the pipelines. Since the project will provide benefits without adverse impacts, we find that El Paso's proposal is in the public convenience and necessity.

B. Environmental Analysis

18. To satisfy the requirements of the National Environmental Policy Act (NEPA), Commission staff prepared an EA for El Paso's proposal. The EA was placed in the public record on August 16, 2010.

19. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality, noise, safety, and alternatives.

⁶ Certificate Policy Statement, 88 FERC at 61,747 n.12.

20. The Center argues that the EA “violates regulatory requirements to ensure public availability of environmental documents and solicit information from the public,” and seeks delay of the project until further analysis is completed.⁷ Center points to a checklist attached to the EA that sets forth seven criteria for determining whether to issue a “Notice of Intent” (NOI) to prepare an EA for the project.⁸ Center argues that staff’s determination that the seven criteria were met, thus precluding the need for an NOI, was wrong because the last two criteria (no environmentally sensitive areas are crossed and no environmental issues have been raised by third parties) were not met.⁹

21. Specifically, Center cites to violations of “18 C.F.R. § 308.5,” and “18 C.F.R. § 308.5(b).”¹⁰ These regulations do not exist. None of the Commission’s regulations (including § 380.5, which Center presumably intended to cite, nor any other regulations addressing public notice and comment), or the Council on Environmental Quality regulations implementing NEPA, require the Commission to issue an NOI for an EA under any circumstance. Moreover, the NOI checklist referenced by Center is a non-binding, one-page internal screening device that staff uses to decide whether to, as the checklist states, *recommend* that an NOI not be prepared.¹¹

⁷ Center also asserts that El Paso’s July 13, 2010 application suggests that FWS and COE clearances had already been received, which “squarely contradicts the *Federal Register* notice of July 22 stating that an EA would precede other federal authorizations

of the Project.” Center argues this is further reason to delay the project, since COE authorized it “without benefit of informed analysis.” Center Motion at 7. Center mischaracterizes the July 22 notice, which states that if an EA is prepared, all federal authorizations must be completed “within 90 days of the date of issuance” of the EA.

⁸ An NOI generally describes a proposed action and solicits comments from interested parties. An NOI is required when an environmental impact statement (EIS) will be prepared, but not, as explained below, when an EA will be prepared.

⁹ The other five criteria include: 1) no potential to conflict with land use; 2) no residences within 50 feet of construction work areas; 3) no congested residential areas are crossed; 4) no compressor station construction is proposed; and 5) no public use areas are crossed.

¹⁰ Center Motion at 6.

¹¹ The checklist is a staff internal document that was inadvertently placed in the public record.

22. Even assuming, arguendo, that the NOI checklist is a binding document, staff correctly concluded that the project crosses no environmentally sensitive areas, and that no environmental issues were raised. Center's basis for arguing otherwise is its assertion that the July 31, 2010 FWS Biological Opinion concludes "that the Project will adversely affect critical habitat of threatened loach minnow." This is not accurate. Indeed, the Biological Opinion concludes the opposite, stating:

the action, as proposed, is *neither likely to jeopardize* the continued existence of the loach minnow, *nor likely to destroy or adversely modify* designated critical habitat for the species [emphasis added].¹²

23. Accordingly, we reject Center's arguments that the EA failed to meet regulatory requirements for public availability and comment, and decline to delay the project for further analysis.¹³

24. Center also takes issue with the substance of the EA, citing its failure to articulate a "reasonable objective" for the project, and failure to consider alternatives. We disagree that the EA is inadequate in this regard. The EA clearly describes the purpose of the project: to repair the currently-exposed segment of pipeline and prevent future erosion and exposure of the pipelines in the project area.¹⁴ Further, staff considered the alternatives presented in El Paso's Resource Reports and filed alignment sheet and maps, and concluded that there was no preferred alternative to proposal of replacing the exposed pipeline.¹⁵

¹² Biological Opinion at 9. *See also* EA at 4.

¹³ Even if we accepted the argument that an NOI was required, we fail to see how Center is harmed; by its own admission Center became aware of the proposed project pursuant to an August 4, 2010 notice placed in the local paper by El Paso, and subsequently filed comments, which are addressed in this order. Center Motion at 7.

¹⁴ The EA at 1 states: "The Project would repair the currently exposed Line 2083 and would mitigate the risk of future exposure of Lines 2006, 2007 and 2083 by reducing the number of pipeline crossings from three to two, locating the new pipeline segments into the same trench, and burying those segments below scour depth."

¹⁵ EA at 4. We note that if an alternative is not reasonable, it may be eliminated from further study. Although not discussed in the EA, this is what occurred here. The range of alternatives considered would include leaving the exposed pipeline in place or removing and relocating the pipeline. The former would not resolve the safety issues, while the latter would involve an equivalent or greater amount of disturbance to the

(continued...)

25. Center also alleges, without more, a general laundry list of deficiencies in both the EA and El Paso's Environmental Report (ER),¹⁶ including insufficient information on water, fish, chemical contamination, recreation, and aesthetics (including insufficient analysis of direct, indirect, or cumulative effects). The one example Center cites to support these broad claims is alleged deficiencies in the soil impacts analysis. Center asserts that El Paso's Resource Report inadequately addresses soil impacts and fails to list, by milepost, certain information on soil impacts, and measures to mitigate those impacts.

26. We disagree. El Paso's Resource Report 7 provides detailed data on the existing soil associations in the project area. It presents the project breakdown by soil complex and discusses the characteristics and limitations of each soil type. Moreover, a number of mitigation measures for soil impacts were included in Resource Report 7, and were found to be acceptable.¹⁷

27. Center's claim that there was "no effort by the Commission or El Paso to compare proposed mitigation measures, such as the permanent river bank stabilization structure, with the *Upland Erosion Control, Revegetation and Maintenance Plan*,"¹⁸ is also unfounded. The measures presented in the Plan are intended to provide the starting point for basic pipeline construction practices. They are not, as Center seems to suggest, project-specific mitigation. The bank stabilization structures, on the other hand, are project-specific measures, intended to go beyond the requirements of the Plan. Therefore, they were presented by El Paso in its Appendix 1A, Aerial Alignment Sheets, Topographic and Typical/Site Location Plot/Site Plans and Appendix 1C, Environmental

riverbed and habitat at a different location. Therefore, the alternatives were determined to be unreasonable and not studied further in the EA.

¹⁶ Under the Commission's regulations an application filed with the Commission under the NGA must include an environmental report consisting of thirteen "Resource Reports" and related materials. *See* 18 C.F.R. § 380.12 (2010).

¹⁷ Resource Report 7, sections 7.1 and 7.5.

¹⁸ Resource Report 7 must compare proposed mitigation measures with staff's current *Upland Erosion Control, Revegetation and Maintenance Plan*, and explain how proposed mitigation measures provide equivalent or greater protections to the environment. *See* 18 C.F.R. § 380.12(i)(5).

Construction Document (ECD). The EA reviewed the ECD and found the measures to provide acceptable mitigation for the proposed action.¹⁹

28. We also disagree with Center's assertion that milepost data was required in the Resource Report. Such data is more appropriate for projects of a larger scope to distinguish and locate areas of concern. For a project of this size (the longest segment of which is less than 1000 feet), a milepost designation is neither applicable nor useful. We believe that the information provided in El Paso's ER, and incorporated into the EA, was more than adequate for assessing soil impacts.

29. As to the rest of Center's broad EA claims, although it is impossible to address its concerns without specific allegations, we believe that the detail set forth in both the EA and ER is commensurate with the limited size and complexity of this project and provided the appropriate level of analysis for staff's conclusions.²⁰

30. Accordingly, based on the analysis in the EA, we conclude that if constructed/replaced and operated in accordance with El Paso's application and supplement, and in compliance with the environmental conditions in the Appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.²¹

31. 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

¹⁹ Page 3 of the EA states: "To minimize adverse impacts during construction activities in the river floodplain, El Paso would implement measures included in its Environmental Construction Document (ECD). The ECD includes measures consistent with the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan and the Commission's Wetland and Waterbody Construction and Mitigation Procedures."

²⁰ For example, Center states, without more, that the EA inadequately considers recreation and aesthetics. We note that visual resources were addressed in El Paso's Resource Report 8.5. Staff concluded that visual and recreational impacts would mostly be limited to construction, with minor aesthetic impacts associated with the bank stabilization project during project operation. Due to the project's small scale and the lack of aboveground facilities (other than ground valves), no significant impacts to aesthetics and recreation were identified in the project area.

²¹ Environmental condition number 9 in the EA has been deleted from this order, as El Paso has now received all federal permits.

local laws, may prohibit or unreasonably delay the construction/replacement or operation of facilities approved by this Commission.²²

IV. Conclusion

32. At a hearing held on September 16, 2010, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

The Commission orders:

(A) In Docket No. CP10-470-000, a certificate of public convenience and necessity is issued to El Paso under NGA section 7(c) authorizing the construction and operation of the project as described more fully in the application and in the body of this order.

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

(C) The certificate authority granted in Ordering Paragraph (A) is conditioned on:

(1) El Paso's completion of the authorized construction of the proposed facilities and making them available for service within twelve months of issuance of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) El Paso's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and subsections (a), (c), (e), and (f) of section 157.20 of the regulations;

(3) El Paso's compliance with the environmental conditions listed in the appendix.

²²See, e.g. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) The Center's late-filed motion to intervene is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX
El Paso Natural Gas Company
Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. El Paso shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the environmental assessment (EA), unless modified by this Order. El Paso must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, El Paso 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 location shall be as shown in the EA. **As soon as they are available, and before the start of construction**, El Paso 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 the facility 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.

El Paso'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. El Paso'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. El Paso 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, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Before construction begins**, El Paso shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. El Paso must file revisions to the plan as schedules change. The plan shall identify:

- a. how El Paso will implement the construction procedures and mitigation measures described in its application and supplements, identified in the EA, and required by this Order;
 - b. how El Paso 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;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions El Paso will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of El Paso's organization having responsibility for compliance; and
 - g. the procedures (including use of contract penalties) El Paso will follow if noncompliance occurs.
7. Beginning with the filing of its Implementation Plan, El Paso shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the construction status of the project and work planned for the following reporting period;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(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. a description of the 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 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 El Paso from other federal, state, or local permitting agencies concerning instances of noncompliance, and El Paso's response.

8. **Within 30 days of placing the authorized facilities in service**, El Paso 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 El Paso 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.