

154 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Natural Gas Pipeline Company of America LLC

Docket No. CP15-505-000

ORDER ISSUING CERTIFICATE

(Issued March 17, 2016)

1. On June 1, 2015, Natural Gas Pipeline Company of America LLC (Natural) filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's Regulations,² for a certificate of public convenience and necessity to construct, operate, and maintain a new compressor station and associated facilities in Livingston County, Illinois (Chicago Market Expansion Project) in order to provide additional transportation service. As discussed below, the Commission grants Natural's request, subject to certain conditions.

I. Background

2. Natural is a limited liability company organized and existing under the laws of the State of Delaware. Natural transports natural gas in interstate commerce on a pipeline system extending from New Mexico, Texas, and Louisiana in the south to Illinois and Iowa in the north.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Part 157 (2015).

II. Proposal

A. New Facilities

3. Natural proposes to install a new compressor station (Compressor Station 312) on its mainline in Livingston County, Illinois, consisting of 30,000 horsepower (hp) of compression, suction and discharge station interconnect piping, and ancillary facilities. In addition, Natural plans to rely on section 2.55(a) of the Commission's regulations to install various appurtenances and auxiliary equipment at the new compressor site. Natural states that the purpose of the proposed Chicago Market Expansion Project is to increase the capacity of its existing mainline to provide 238,000 dekatherms per day (Dth/d) of firm northbound firm transportation service from its existing Compressor Station 311 in Piatt County, Illinois, to its Compressor Station 113 in Will County, Illinois. In addition, the expansion facilities will ensure that gas is delivered at Natural's existing contractual pressure of 300 pounds per square inch gauge (psig),³ or at alternative pressures as requested by a shipper and agreed to by Natural. Natural estimates the total cost to construct the proposed project would be approximately \$61 million.

B. Open Season

4. Natural conducted an open season from October 16 to November 17, 2014, resulting in precedent agreements and executed firm transportation agreements with four prospective shippers for the full 238,000 Dth/d of incremental firm transportation service that the proposed expansion would provide. The prospective shippers, volumes, and terms of service are as follows: Antero Resources Corporation, 75,000 Dth/d for a 17-year term; Occidental Energy Marketing, Inc., 50,000 Dth/d for a seven-year term; North Shore Gas Company, 25,000 Dth/d for a five-year term; and Northern Illinois Gas Company d/b/a Nicor Gas Company (Nicor), 88,000 Dth/d for a 9.4-year term. Natural proposes to charge its existing applicable Rate Schedule FTS system rates for service provided by the expansion capacity and seeks a predetermination that it may roll its expansion costs into its existing system-wide rate base in a future rate case. Natural states the prospective shippers have elected to pay negotiated rates for their expansion services.⁴

³ See Natural's tariff's General Terms and Conditions, Section 25.2, Delivery Pressure.

⁴ Natural observes that for service under either negotiated rates or recourse rates, it offers shippers the option available under Rate Schedule FTS to make use of all receipt and delivery points on its system on a secondary out-of-path basis. Natural states the prospective expansion shippers have elected this option.

III. Notice and Interventions

5. Public notice of Natural's application was published in the *Federal Register* on December 8, 2015.⁵ A timely, unopposed motion to intervene was filed jointly by the Village of Bethany, Illinois; the Cities of Sullivan, Corning, and Pinckneyville, Illinois; and the City of Perryville, Missouri (the Municipals). Timely, unopposed motions to intervene were filed individually by Calpine Energy Services, L.P.; Laclede Gas Company; MidAmerican Energy Company; NJR Energy Services Company; Northern Indiana Public Service Company; the Peoples Gas Light and Coke Company; Nicor; and North Shore Gas Company (the latter two parties included comments in support of the proposed project).⁶

IV. Discussion

6. Since Natural's proposed Chicago Market Expansion Project would be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the proposed facilities are subject to NGA sections 7(c) and (e).

A. Application of the Certificate Policy Statement

7. On September 15, 1999, the Commission issued a policy statement to provide guidance as to how the Commission evaluates proposals for certificating new construction.⁷ The Certificate Policy Statement establishes 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 natural gas facilities, the Commission balances public benefits against potential adverse consequences. In doing so, the Commission considers the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, an applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain.

⁵ 80 Fed. Reg. 76,280 (Dec. 8, 2015).

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2015).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

8. Under this policy, the threshold requirement in establishing the public convenience and necessity for proposed projects is that the applicant must be prepared financially to 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 proposed 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 proposed location of the new facilities. 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.

9. For the additional firm transportation service that the Chicago Market Expansion Project would provide, Natural proposes to use its existing Rate Schedule FTS⁸ rates as initial recourse rates for primary receipt points in the Iowa-Illinois Receipt Zone and primary delivery points in the Market Delivery Zone, including fuel. As discussed below, we find it is appropriate to charge the existing applicable system reservation charge for the expansion services because a calculated incremental reservation charge for the expansion would be lower than the existing system charge. However, we are directing Natural to charge a new incremental commodity charge for service on the expansion, as a commodity charge calculated solely on the variable costs of the expansion project is higher than the existing applicable system commodity charge. Further, we are denying Natural's request to roll its expansion costs into its existing rates and requiring Natural to separately track and record the costs and revenues from the expansion. By adjusting the commodity rate, denying the request for rolled-in rate treatment, and requiring the tracking of the costs associated with the expansion, we are ensuring that Natural's existing shippers will not subsidize the expansion. Because Natural's existing customers will not subsidize the expansion, the threshold requirement of no subsidization is met.

10. We find the proposed project will not adversely impact (1) Natural's current customers, as it will not degrade current services or operations of the Natural system, or (2) other existing pipelines or their customers, as it will not replace any service currently provided by another pipeline. In addition, Natural has minimized impacts on landowners and communities by purchasing approximately 60 acres of agricultural land and locating the new compressor facilities on approximately 5.8 acres within its existing right-of-way.

⁸ Natural's Rate Schedule FTS offers "Peak" rates effective November through March, and "Off-Peak" rates effective April through October.

11. Natural has submitted precedent agreements and executed firm transportation agreements for the full 238,000 Dth/d of firm transportation service that would be created by the expansion, thereby demonstrating a need for the project. As we observed in our Certificate Policy Statement, service commitments for new capacity constitute “important evidence of demand for a project;” consequently, when “an applicant has entered into contracts or precedent agreements for the capacity,” we take this as “significant evidence of demand for the project.”⁹

12. Natural states that the proposed expansion will also enable it to deliver certain volumes of gas to Nicor, a local distribution company in the Chicago area, at pressures in excess of 300 psig.¹⁰ Natural explains that sustained cold temperatures and increased gas demand attributable to the ‘Polar Vortex’ experienced in the winter of 2013-2014 provided new information concerning the operation of certain delivery points and highlighted the need for Nicor’s requested pressure assurances. Natural states that the new compressor would provide increased pressure to support deliveries in its Market Delivery Zone.

13. Based on the proposed project’s anticipated benefits, and the lack of identifiable adverse impacts on existing Natural customers and on existing pipelines or their customers, and Natural’s efforts to mitigate impacts on landowners and the environment, we find that under the criteria of our Certificate Policy Statement and NGA section 7(c), and subject to the environmental discussion and the conditions included in this order, we find the proposed Chicago Market Expansion Project is required by the public convenience and necessity.

B. Rates

1. Initial Recourse Rates

14. Natural intends to use its existing Rate Schedule FTS rates as the initial recourse rates for firm expansion transportation service. In support of using its existing system rates as the incremental recourse rates, Natural provides a cost and revenue study that estimates the first year’s incremental cost of service will be \$10,839,035, not including

⁹ Certificate Policy Statement 88 FERC ¶ 61,227 at 61,748.

¹⁰ In addition to being one of the prospective expansion shippers, Nicor is Natural’s largest existing customer. An existing Natural-Nicor Negotiated Rate Agreement allows the parties to specify the pressure for certain volumes at certain delivery points. As discussed below, Natural proposes that the expansion service it would provide to Nicor be subject to the terms of this Agreement.

fuel.¹¹ This cost of service is based on an estimated capital cost of \$60,519,200 for the new facilities. Natural's cost and revenue study shows service to its prospective expansion shippers, all of whom will pay negotiated rates, will generate approximately \$9,761,761 in "Net Income," including fuel.¹²

15. Natural claims that Exhibits N and Z-1 to its application provide support for the proposed rates and for its request for a predetermination that rolled-in rate treatment is appropriate for the proposed facilities. However, we find Exhibit N, which shows that expansion shippers will generate revenues in excess of costs, is flawed. Exhibit N presents the total projected revenues, expenses, and income associated with the proposed facilities. The total projected revenues are the sum of three separate charges: the reservation charge, the commodity charge, and the fuel retention charge. Natural compares this total to its Exhibit Z-1, Part 1, cost of service. However, whereas Exhibit N aggregates the revenues generated by these three charges, Exhibit Z-1 includes only the costs of service underlying the reservation and commodity charges; it excludes costs to be recovered through the fuel retention charge.

16. Calculating Net Income by subtracting costs underlying two charges from revenues derived from three charges constitutes an incorrect comparison. This calculation fails to recognize that Natural has made a proposal for three initial rate charges (reservation, commodity, and fuel), each of which must be separately supported. Aggregating costs and revenues may mask the fact that one (or more) of the proposed charges does not fully recover the costs that the charge is designed to recover, or that certain charges over-recover the costs allocated to those charges. We have previously found that variable and fuel costs should not be a profit center.¹³ Natural's exhibits do not demonstrate that the proposed commodity and fuel charges will only recover variable and fuel costs.

17. Commission regulations require open access pipelines such as Natural to use the straight fixed variable (SFV) cost classification method of rate design.¹⁴ Under SFV, fixed costs should be recovered through the reservation charge and variable costs should be recovered through the commodity charge. Natural estimates incremental Operation and Maintenance (O&M) expenses of \$543,114. However, Natural does not itemize its

¹¹ See Natural's Application, Exhibit Z-1, Part 1, p. 1, line 7.

¹² See Natural's Application, Exhibit N, p. 2, line 8.

¹³ See, e.g., *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 41 (2005) and *Ruby Pipeline, L.L.C.*, 142 FERC ¶ 61,104, at P 14 (2013).

¹⁴ 18 C.F.R. § 284.7(e) (2015).

accounts or classify these expenses. Therefore, it is not possible to determine from Natural's exhibits whether there are variable costs included in the total and whether Natural's proposed initial rates are consistent with the required SFV rate design. In response to a Commission data request, Natural identifies a total of \$325,929 in non-labor O&M expenses for FERC Account Nos. 853 and 864.¹⁵ Under the Commission's traditional non-labor cost classification method, Account Nos. 853 and 864 costs itemized as non-labor are classified as variable costs.¹⁶

18. Reservation charges should only recover fixed costs. Natural proposes to use its existing Rate Schedule FTS system reservation charge of \$3.7000 per Dth¹⁷ as an initial reservation charge. Natural did not calculate an illustrative incremental reservation charge for the proposed project. However, after removing the variable (non-labor) component of O&M expenses from Natural's aggregated total incremental non-fuel cost of service, we find the resulting incremental monthly reservation charge would be lower than the existing monthly reservation charge. As the incremental monthly reservation charge would be less than Natural's existing system rate, we accept Natural's proposal to use its existing system monthly reservation charge as the initial monthly reservation charge.

19. Commodity charges must be designed to recover solely variable costs.¹⁸ Natural proposes an initial commodity charge equal to its existing system commodity charge under Rate Schedule FTS (Off-Peak) of \$0.0005 per Dth.¹⁹ As indicated above,

¹⁵ Natural's August 5, 2015 Data Response did not provide the account numbers in numerical order and did not properly itemize its accounts consistent with the Commission's longstanding requirement under Part 201 of the regulations; further, Natural's Application did not follow the Commission-directed format for providing a classified cost of service (*Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, version Sept. 11, 2015, Appendix A, Schedule I-2).

¹⁶ See, e.g., *Ozark Gas Transmission System*, 64 FERC ¶ 61,298, at 63,135, n.5 (1993), wherein the Commission observes that it has "classified non-labor compression and processing O&M costs as variable for more than 40 years."

¹⁷ See Natural's FERC Gas Tariff, Part 4.2, Rate Schedule FTS (Off-Peak), 3.0.0. The Commission used Natural's lower Rate Schedule FTS (Off-Peak) rate for the purpose of conducting a worst case scenario analysis.

¹⁸ 18 C.F.R. § 284.10(c) (2015) states that the minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies."

¹⁹ See Natural's FERC Gas Tariff, Part 4.2, Rate Schedule FTS (Off-Peak), 3.0.0.

Natural's August 5, 2015 Data Response identifies \$325,929 in variable costs. Recalculating the incremental commodity charge using the variable costs identified by Natural results in a commodity charge of \$0.0038 per Dth.²⁰ Because the incremental commodity charge of \$0.0038 per Dth is higher than Natural's currently effective non-peak commodity charge of \$0.0005 per Dth and its peak commodity charge of \$0.0021 per Dth, we reject Natural's proposed initial commodity charge of \$0.0005 per Dth as contrary to our regulations and policy, which require, with respect to usage charges, that a pipeline charge the higher of the incremental charge or the generally-applicable charge.²¹ Accordingly, we will require Natural to use an initial commodity charge of \$0.0038 per Dth. Should Natural want to develop peak and off-peak commodity rates, it may do so, provided that it shows the development of the rates.²²

20. Natural proposes to apply its existing fuel retention charge of 1.0 percent to all incremental receipt volumes.²³ Natural analyzed the impact of adding the expansion volumes of 238,000 Dth/d to actual flow, and found that on an annual basis, fuel collections from the prospective expansion shippers' volumes would exceed fuel consumed by 596,131 Dth annually, thus resulting in a "net surplus of system fuel."²⁴ The Commission accepts Natural's proposed initial fuel retention charge.

²⁰ $(\$325,929 \text{ variable costs}) / (238,000 \text{ Dth per day} \times 365 \text{ days})$.

²¹ See *Northern Natural Gas Co.*, 121 FERC ¶ 61,136, at P 17 (2007), stating that "the Commission's regulations do not permit discounts below variable costs." See also, *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 (2002).

²² If Natural chooses to develop peak and off-peak commodity rates, it shall file an amendment prior to its compliance filing. If Natural chooses to place its expansion project into service before the Commission has acted upon such an amendment, the peak and off-peak commodity rates will no longer be subject to change by means of an amendment to its certificate pursuant to NGA section 7. Accordingly, in that event the Commission would have to terminate the amendment proceeding, without prejudice to Natural making an NGA section 4 filing in order to change its rates, terms, or conditions of service. See, e.g., *Texas Gas Transmission, LLC*, 153 FERC ¶ 61,323, at P 21 (2015).

²³ The currently effective fuel retention charge for transportation from the Iowa-Illinois Receipt Zone to the Market Delivery Zone is 1.0 percent. While this order refers to a "fuel" retention charge, the charge actually recovers fuel use and lost and unaccounted for gas costs.

²⁴ Natural's Application, Exhibit Z-1, Part II.

21. Natural is required to file tariff records between 30 to 60 days prior to the date of the Chicago Market Expansion Project facilities go into service reflecting the Rate Schedule FTS incremental rates.

22. Natural did not propose interruptible transportation rates. Therefore, Natural is directed to implement interruptible rates that are consistent with Commission policy requiring a pipeline to charge its currently effective interruptible transportation service rates for interruptible service made available by the capacity added by an expansion project that is integrated with existing pipeline facilities.²⁵

2. Negotiated Rates

23. Natural proposes to charge its expansion shippers negotiated rates. Natural must file negotiated rate agreements containing the information required by the Commission's negotiated rates policy not less than 30 days nor more than 60 days before placing the proposed project into service.²⁶

3. Request for Predetermination of Rolled-In Rates

24. Natural requests the Commission make a predetermination that rolled-in rate treatment will be appropriate for the Chicago Market Expansion Project's costs in a future general section 4 rate case. Natural asserts that the proposed expansion's incremental revenues associated with the additional capacity would exceed the cost of service associated with the additional capacity by approximately \$4,450,100 in the first year²⁷ and that the expansion would result in system-wide benefits for existing shippers on Natural's system.

25. In order to receive a predetermination that it may roll the costs of an expansion project into its existing system-wide rate base in a future NGA general section 4 rate proceeding, a company must demonstrate that doing so will not result in existing customers subsidizing the expansion. For the purpose of making such a determination, the Commission compares the costs associated with the proposed expansion to the revenues which would be generated utilizing actual contract volumes and the maximum recourse rate, or the actual negotiated rate if the negotiated rate is lower than the recourse

²⁵ See, e.g., *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012) and *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010).

²⁶ See 18 C.F.R. § 154.207 (2015).

²⁷ Natural's Application, Exhibit Z-1, Part 1, p. 1, line 8.

rate.²⁸ We find Natural's analysis of the impacts of its proposed expansion is flawed, for the reasons discussed below.

26. Exhibit N to the application shows the projected expansion revenues as the sum of three separate charges – the reservation charge, the commodity charge, and the fuel retention charge – whereas Exhibit Z-1 only includes costs underlying the reservation and commodity charges, not fuel costs. Calculating net income by subtracting costs underlying two charges from revenues derived from three charges is an incorrect comparison.

27. Natural also did not compare the costs of the Chicago Market Expansion Project to the revenues generated utilizing actual contract volumes and the maximum recourse rate, or the actual negotiated rate if the negotiated rate is *lower* than the recourse rate. Rather, Natural calculated incremental revenue from the proposed expansion using the negotiated rates, which are *higher* than the existing system rates. This is an inappropriate comparison,²⁹ as there is no requirement that negotiated revenues in excess of the maximum recourse rate be reflected in a subsequent NGA general section 4 rate proceeding's rate calculations. In view of this, we will not grant Natural's request for a predetermination of rolled-in rate treatment for all costs. This finding is without prejudice to Natural arguing in a future section 4 rate proceeding that rolling expansion costs into its system-wide rate base is appropriate.

To assure that costs are properly allocated between Natural's existing and expansion shippers, we direct Natural to keep separate books and accounting of costs attributable to the Chicago Market Expansion Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.³⁰ Such measures protect existing customers from cost overruns and subsidization that might result from under-collection of the expansion project's incremental costs of service, as well as assist the Commission and parties to the rate proceedings in determining the costs of the expansion project.

²⁸ See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013) (*Tennessee*).

²⁹ *Id.*

³⁰ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23, *order on reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir 2010).

4. Request for Predetermination of Non-Conforming Provisions

28. Natural requests a predetermination from the Commission that the non-conforming creditworthiness provisions in the negotiated rate agreements with North Shore Gas Company, Occidental Energy Marketing, and Antero Resource Corporation, and the non-conforming pressure provisions with Nicor, are permissible non-conforming provisions.³¹

29. In *Columbia Gas Transmission Corp. (Columbia)*³² and *ANR Pipeline Co. (ANR)*,³³ the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in blank spaces with the appropriate information allowed by the tariff and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. Provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers and (2) provisions the Commission can permit without a substantial risk of undue discrimination.³⁴ Below we apply this standard of review to Natural's proposed non-conforming provisions.

5. Creditworthiness Provisions

30. Natural's proposed creditworthiness provisions require an expansion shipper to provide security in an amount equivalent to 12 months of reservation charges if the shipper fails to demonstrate creditworthiness in accordance with the provisions of Natural's tariff. Natural argues these provisions reflect a reasonable sharing of the project risk between Natural and expansion shippers and are consistent with Commission policy.

³¹ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreements and a tariff record identifying the agreements as non-conforming are filed with the Commission consistent with section 154.112 of the regulations. *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 (2015).

³² 97 FERC ¶ 61,221 (2001).

³³ 97 FERC ¶ 61,224 (2001).

³⁴ *See Columbia*, 97 FERC ¶ 61,221 at 62,002 and *ANR*, 97 FERC ¶ 61,224 at 62,022.

31. We find that the incorporation of the non-conforming creditworthiness provisions constitutes a material deviation from Natural's *pro forma* service agreement. However, we have found that non-conforming provisions, such as shippers' creditworthiness standards,³⁵ may be permissible and necessary to reflect the unique circumstances involved with the construction of new infrastructure and to ensure the viability of a project.³⁶ Here, we accept Natural's assertion that the non-conforming creditworthiness provision is necessary to provide assurance sufficient to justify its undertaking the financial risk of the proposed project, and conclude that Natural's non-conforming creditworthiness provisions are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.³⁷

6. Pressure Provisions

32. We reject Natural's request for a predetermination that its proposed non-conforming pressure provisions are just and reasonable, because these provisions are material deviations from Natural's tariff that may be unduly discriminatory and unduly preferential.

33. Natural's existing tariff states that Natural will deliver gas to customers at not less than 300 psig, unless Natural and a customer agree on a different minimum pressure.³⁸ If the parties agree on a different minimum pressure, that alternative pressure is designated in a blank space in Exhibit B of Natural's firm transportation service agreement form. Since 1999, Natural has had an existing Negotiated Rate Agreement (Umbrella NRA)

³⁵ See, e.g., *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 50 (2006), observing that "pipelines need sufficient financial assurances from initial shippers to ensure, prior to the investment of significant resources in the project, that it can protect the financial commitment to the project." Citing the Commission's *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. and Regs. ¶ 31,191, at P17 (2005). See also *Monroe Gas Storage Co.*, 130 FERC ¶ 61,113, at P 51 (2010) and *Kern River Gas Transmission Co.*, 131 FERC ¶ 61,271, at P 66 (2010).

³⁶ See, e.g., *Tennessee*, 144 FERC ¶ 61,219, at P 32 (2013) and *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008).

³⁷ See, e.g., *Northern Border Pipeline Co.*, 51 FERC ¶ 61,261, at 61,769 (1990), in which we permitted a company to similarly require shippers to provide 12 months' worth of collateral.

³⁸ Section 25.2 of Natural's tariff's General Terms and Conditions.

with Nicor covering the majority of Nicor's transportation and storage portfolio. The existing Umbrella NRA contains certain non-conforming provisions previously approved by the Commission. Natural seeks a predetermination for additional, new non-conforming provisions associated with its pressure obligations in the Umbrella NRA.

34. Natural explains that the new "pressure provisions the parties have agreed to in the Umbrella NRA, including the rate credit structure, are potentially non-conforming as they go beyond the blank in Natural's tariff form of service agreement and NRA."³⁹ The new provisions provide (1) pressure obligations for each delivery point up to specified daily flow and hourly flow limits, (2) notice requirements to provide the minimum pressure, (3) rate credits that Natural will provide (limited to \$12,000,000 per year) for failure to meet the minimum pressure, and (4) an arbitration provision for resolving disputes pertaining to the pressure obligations and determination of rate credits that is different from what is provided in Natural's tariff.⁴⁰ Natural maintains it has designed its proposed expansion project in a manner that will permit it to meet these additional service obligations to Nicor.⁴¹ Natural contends that not only can it serve Nicor without detrimental effects to other point operators in the market area, but that the proposed additional compression would provide operational benefits to support deliveries in its market area for the benefit of other regional point operators and shippers.⁴²

35. We find the non-conforming provisions described above in the unexecuted service agreement are material deviations from Natural's *pro forma* service agreement. Because these new non-conforming provisions go beyond the option Natural offers to its existing customers of electing an alternative delivery pressure – by designating an agreed-upon pressure in Exhibit B of the firm transportation service agreement form – Natural's non-conforming provisions would provide substantive and valuable benefits to Nicor that Natural would not make available to its other customers.

36. Although not all material deviations are impermissible, if we determine a deviation presents a substantial risk of undue discrimination, we deem it impermissible. That is the case with these provisions. Natural has neither explained nor supported the various components of the negotiated pressure provisions, including whether or how the rate credits may affect its other customers' rates. Therefore, we find the non-conforming

³⁹ Natural's Application at 15.

⁴⁰ These provisions are located at Article 6 of the Umbrella NRA. *See* Natural's Application, Exhibit P, NRA # 116184A5, Article 6, Attachment 2.

⁴¹ *Id.* at 13.

⁴² *Id.* at 15.

provisions identified by Natural present a significant potential for undue discrimination among customers. Accordingly, we reject Natural's request for a predetermination that the proposed Nicor non-conforming provisions are just and reasonable. If Natural wishes to serve Nicor subject to such provisions, Natural may present and support its request to do so in an NGA section 4 filing.

37. Not less than 30 days nor more than 60 days before providing service to any Chicago Market Expansion Project customer under a non-conforming agreement, Natural must file an executed copy of the non-conforming agreement, disclosing and reflecting all non-conforming language as part of Natural's tariff and tariff records, and identifying these agreements as non-conforming agreements consistent with sections 154.112 and 154.207 of the Commission's regulations. In addition, we emphasize that the above determination relates only to those items described by Natural in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

C. Environmental Review

38. On July 9, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment and Request for Comments on Environmental Issues for the Proposed Chicago Market Expansion Project* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners in the vicinity of the project (i.e. landowners within 0.5 mile of the proposed compressor station).

39. To satisfy the requirements of the National Environmental Policy Act of 1969,⁴³ Commission staff prepared an Environmental Assessment (EA) for Natural's proposed project, which was placed in the public record January 11, 2016. No comments were filed regarding the EA. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives.

40. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Natural's application, as supplemented, and in compliance with the environmental conditions in the appendix to this order, our approval of the proposed Chicago Market Expansion Project would not constitute a major federal action significantly affecting the quality of the human environment.

⁴³ 42 U.S.C. §§ 4321-4370 (2012).

V. Conclusion

41. For the reasons set forth herein, we find that granting authorization under NGA section 7(c) for Natural's proposed Chicago Market Expansion Project is required by the public convenience and necessity. Thus, we grant Natural's requested authorizations.

42. 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 of facilities approved by this Commission.⁴⁴

43. At a hearing held on March 17, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Natural under NGA section 7(c), authorizing the construction and operation of natural gas facilities as described in this order and in the application.

(B) The authorization in Ordering Paragraph (A) is conditioned on Natural:

(1) complying with the conditions set forth in the appendix to this order and all regulations under the NGA, including but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(2) constructing and making available for service the facilities described in this order and in the application within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations; and

⁴⁴ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) executing firm contracts prior to commencing construction for the capacity levels and terms of service represented in signed precedent agreements.

(C) Natural's proposal to use its existing system monthly reservation charge for Rate Schedule FTS as the incremental monthly reservation charge is granted.

(D) Natural's proposal to use its existing commodity charge is denied, and Natural is required to establish an incremental commodity charge for the incremental capacity, as discussed above.

(E) Natural's request to utilize its existing Fuel Retention Percentage is granted.

(F) Natural's request for a predetermination supporting rolled-in rate treatment of the Chicago Market Expansion Project's costs is denied, without prejudice to Natural arguing in its next NGA general section 4 rate case that rolling such costs into its system-wide rate base is appropriate.

(G) Natural's request for a predetermination for non-conforming creditworthiness provisions is granted.

(H) Natural's request for a predetermination for non-conforming pressure provisions is denied.

(I) Natural shall file actual tariff records with the initial recourse rates not less than 30 days nor more than 60 days prior to the date the Chicago Market Expansion Project goes into service.

(J) Natural 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 Natural. Natural shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

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

1. Natural 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. Natural 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 measures; 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 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 and operation.

3. **Prior to any construction**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed project site drawings. **As soon as they are available, and before the start of construction**, Natural shall file with the Secretary any revised detailed facility maps/plot plans at a scale not smaller than 1:6,000 for the 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 maps/plans.

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

5. Natural shall file with the Secretary detailed 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 the OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by its Environmental Compliance Management Plan and/or minor filed 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 resource 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 authorization and before construction begins**, Natural shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Natural must file revisions to the plan as schedules change. The plan shall identify:

- a. how Natural would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
 - b. how Natural 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;
 - c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instruction Natural would 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 Natural's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural would follow if noncompliance occurs; and
 - h. 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 environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Natural shall employ at least one EI. The EIs 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 (see condition 6 above) 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. Beginning with the filing of its Implementation Plan, Natural shall file updated status reports with the Secretary on a **monthly 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. an update on Natural's efforts to obtain the necessary federal authorizations;
 - b. the 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;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI 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;
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. 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
 - g. copies of any correspondence received by Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities**, Natural shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP **before placing the new compressor station into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Natural 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 conditions in the order Natural 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. Natural shall make all reasonable efforts to ensure its predicted noise levels from the Compressor Station 312 at full power load condition are not exceeded at nearby noise sensitive areas and file noise survey showing this with the Secretary **no later than 60 days** after placing the Compressor Station 312 in service. If a full power load condition noise survey is not possible, Natural shall provide an interim noise survey at maximum possible horsepower load and provide the full power load survey **within 6 months**. If the noise attributable to the operation of the equipment at the Compressor Station 312 under interim or full horsepower load conditions exceeds an day-night sound level of 55 decibel (A-weighted scale) at any nearby noise sensitive areas, Natural 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. Natural shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after Natural installs the additional noise controls.