

162 FERC ¶ 61,126
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

WBI Energy Transmission, Inc.

Docket No. CP17-257-000

ORDER ISSUING CERTIFICATE

(Issued February 15, 2018)

1. On April 26, 2017, WBI Energy Transmission, Inc. (WBI Energy) 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 authorization to construct and operate facilities in Clay County, Minnesota, and Cass County, North Dakota (Valley Expansion Project). For the reasons discussed in this order, the Commission grants WBI Energy's requested certificate authorizations, subject to conditions.

I. Background

2. WBI Energy,³ a Delaware corporation, is a natural gas company⁴ that engages in transportation and storage of natural gas in interstate commerce, subject to the Commission's jurisdiction. WBI Energy's pipeline system traverses portions of North Dakota, South Dakota, Montana, and Wyoming. WBI Energy also operates underground

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2017).

³ WBI Energy is a wholly-owned subsidiary of WBI Energy, Inc., which is an indirect wholly-owned subsidiary of MDU Resources Group, Inc. WBI Energy was formerly known as Williston Basin Interstate Pipeline Company.

⁴ See 15 U.S.C. § 717a(6) (2012).

storage reservoirs in the Cedar Creek (Baker) Field in Montana; the Elk Basin Field in Wyoming; and the Billy Creek Field in Wyoming.

3. Pertinent to this order, WBI Energy's existing Sheyenne Subsystem consists of a pipeline that flows gas east, beginning near Bismarck, North Dakota, and extending east to Mapleton, North Dakota. The Sheyenne Subsystem also includes the Cleveland Compressor Station in Stutsman County, North Dakota, and the Steele Compressor Station in Kidder County, North Dakota. The portion of the Sheyenne Subsystem pipeline that is west of WBI Energy's Cleveland Compressor Station is called Line Section 3. The portion of the pipeline that is east of the Cleveland Compressor Station is called Line Section 24.

II. Proposal

4. WBI Energy proposes to construct and operate the following facilities:

- a new compressor station, consisting of a 3,000-horsepower (hp) electric-driven compressor unit and auxiliary equipment, in Cass County, North Dakota (Mapleton Compressor Station),⁵ tying into WBI Energy's existing Line Section 24 and the Mapleton town border station;⁶
- a new bi-directional 37.3-mile, 16-inch-diameter natural gas pipeline, operating at a maximum allowable operating pressure of 1,480 pounds per square inch gauge, from a new interconnection with Viking Gas Transmission Company's (Viking) pipeline at milepost (MP) 0.0 in Clay County, Minnesota, to the new Mapleton Compressor Station at MP 37.3 in Cass County, North Dakota;
- a new regulator station at MP 124.7 on Line Section 24 in Barnes County, North Dakota (Sanborn Regulator Station);
- a pig launcher and receiver at both the proposed Mapleton Compressor Station and the Viking Interconnect; and

⁵ The compressor station will also contain facilities for measurement and regulation and motor control.

⁶ A town border station is also known as a city gate, a location where gas transported through an interstate or intrastate system is delivered into a local distribution system.

appurtenant facilities, such as two mainline block valves, gas cleaning and cooling equipment, cathodic protection, gas measurement and regulation equipment, communication equipment, odorization, associated piping and valves, and other facilities under section 2.55 of our regulations.⁷

5. WBI Energy also proposes to rebuild its existing Jamestown town border station approximately 500 feet away from its current location, at MP 103.9 on Line Section 24 in Stutsman County, and to relocate and rebuild its existing Apple Valley town border station to MP 9.5 on Line Section 3 in Burleigh County, North Dakota.⁸ Both town border stations will consist of high-pressure metering and auxiliary facilities.

6. The proposed facilities are designed to enable WBI Energy to provide approximately 40,000 dekatherms (Dth) per day of firm transportation service on a bi-directional basis between the new interconnection with Viking and the Mapleton Compressor Station to meet the demands of two customers.⁹

7. WBI Energy held a binding open season from June 13 through July 15, 2016, resulting in 10-year binding precedent agreements with Montana-Dakota Utilities Co. (Montana-Dakota)¹⁰ for 30,000 Dth per day and Tharaldson Ethanol Plant, LLC (Tharaldson)¹¹ for 3,350 Dth per day, respectively, of firm transportation service

⁷ 18 C.F.R. § 2.55 (2017).

⁸ WBI Energy will retain the land associated with the existing Jamestown town border station and will abandon by sale certain equipment at the Jamestown town border station. WBI Energy will also abandon by sale the existing Apple Valley town border station. These abandonments will be processed under WBI Energy's Part 157 blanket certificate pursuant to 18 C.F.R. § 157.216(a) (2017). *See* WBI Energy's Aug. 18, 2017 Data Request Response at 1.

⁹ The project is also designed to enhance system reliability for new and existing WBI Energy customers. WBI Energy's Application at 4.

¹⁰ Montana-Dakota is a subsidiary of MDU Resources Group, Inc. and provides retail natural gas and electric service in North Dakota, South Dakota, Montana, and Wyoming.

¹¹ Tharaldson operates an ethanol plant near Casselton, North Dakota.

(i.e., approximately 84 percent of the project's capacity). WBI Energy also held a reverse open season but received no bids.¹²

8. WBI Energy estimates that the project will cost approximately \$57,300,000. WBI Energy proposes to charge an incremental recourse reservation rate for firm transportation service on the project.

III. Notice and Comments

9. Notice of WBI Energy's application was published in the *Federal Register* on May 16, 2017 (82 Fed. Reg. 22,536), with interventions, comments, and protests due by May 30, 2017. NJR Energy Services Company and Northern States Power Company – Minnesota filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.¹³

10. Both Montana-Dakota and Tharaldson filed comments in support of the project. One landowner, Charles J. Larson, filed a comment opposing WBI Energy's proposal because he is concerned about the project's potential effects on water drainage on his land. His concern is addressed in the environmental assessment (EA).¹⁴

IV. Discussion

11. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the proposed construction and operation of the facilities are subject to subsections (c) and (e) of section 7 of the NGA.¹⁵

A. Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁶ The Certificate Policy Statement establishes criteria for

¹² See WBI Energy's Aug. 18, 2017 Data Request Response at 4.

¹³ 18 C.F.R. § 385.214(c) (2017).

¹⁴ See EA at 132-135.

¹⁵ 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

¹⁶ *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).

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 the public benefits against the potential adverse consequences. The Commission's 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.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. 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 consider the environmental analysis where other interests are addressed.

14. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for new construction that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁷ As mentioned earlier, WBI Energy proposes to charge an incremental recourse reservation rate to recover the costs of the project. That proposed rate is higher than its system-wide rate. The proposed incremental recourse reservation rate is calculated to recover all construction, installation, operation, and maintenance costs associated with the project. Accordingly, we find that the project will not be subsidized by existing customers and satisfies the threshold no-subsidy requirement under the Certificate Policy Statement.

15. Montana-Dakota and Tharaldson filed comments in support of the project. Montana-Dakota states that it needs additional firm transportation service to meet the

¹⁷ *Transcontinental Gas Pipe Line Company, LLC*, 158 FERC ¶ 61,125, at P 22 (2017).

growing demand of residential, commercial, and industrial customers in eastern and northeastern North Dakota. Tharaldson states that it needs firm transportation service, which is not available in the area, to satisfy its annual ethanol production goals.

16. WBI Energy's proposal will not degrade service to existing customers. In addition, the project is not designed to replace firm transportation service on other pipelines. Further, no pipelines or their captive customers protested WBI Energy's application. Thus, we find that WBI Energy's existing customers, other pipelines, and their captive customers will not be adversely affected by the project.

17. The proposed project will affect 525.5 acres of land during construction and 233.2 acres of land during operation.¹⁸ To minimize impacts on landowners, WBI Energy voluntarily initiated a pre-filing process to identify and examine landowner concerns. As a result, the project will avoid all residential land. WBI Energy also analyzed route alternatives and consulted with landowners and municipalities to avoid unnecessary adverse land impacts. WBI Energy states that it will continue to negotiate with landowners for access to their property. Accordingly, we find that WBI Energy's proposal has been adequately designed to minimize impacts on landowners and the surrounding communities.

18. The proposed project will enable WBI Energy to provide firm transportation service to Montana-Dakota and Tharaldson. Based on the benefits that WBI Energy's proposal will provide, the absence of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of WBI Energy's proposal, subject to the conditions discussed below.

B. Rates

1. Initial Recourse Transportation Rates

19. WBI Energy proposes an initial incremental recourse reservation charge of \$21.33503 per Dth under its existing Rate Schedule FT-1 for firm transportation service on the project facilities. This incremental recourse reservation charge was derived from WBI Energy's cost of service for the first year of \$10,240,813 and a design capacity of 40,000 Dth per day. WBI Energy calculated the cost of service using the capital structure and rate of return approved in its rate case proceeding in Docket No. RP00-107-000¹⁹ and

¹⁸ EA at 60.

¹⁹ *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 (2003), *order on (continued ...)*

an overall transmission depreciation rate of 2.00 percent as approved in its rate case settlement in Docket No. RP14-118-000.²⁰

20. In a January 17, 2018 response to a staff data request, WBI Energy provided an adjusted cost of service and recalculated its initial incremental recourse reservation charge to reflect changes in the federal tax code, as per the Tax Cuts and Jobs Act of 2017,²¹ which became effective January 2018. WBI Energy's work papers show that the effect of the tax code change is a reduction in the estimated cost of service to \$9,074,701 and a reduction in the initial incremental recourse reservation charge to \$18.90563 per Dth. As WBI Energy's January 17, 2018 calculation reflects the federal tax code that will be in effect when the project goes into service, the Commission will use the revised incremental recourse reservation charge for the purpose of establishing the initial incremental rates. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.²² Because the revised incremental recourse reservation charge of \$18.90563 per Dth is higher than its current Rate Schedule FT-1 system recourse reservation charge of \$9.21000 per Dth, we will require WBI Energy establish the revised charge of \$18.90563 per Dth as its initial incremental recourse reservation charge.

21. WBI Energy proposes to use its existing system commodity charge of \$0.02842 per Dth under Rate Schedule FT-1 for firm transportation service. Since the illustrative incremental commodity charge is less than its system commodity charge, we will approve WBI Energy's proposal.

22. WBI Energy proposes to charge its generally-applicable system interruptible transportation rate under its Rate Schedule IT-1 for any interruptible service rendered as a result of the new capacity available from the project facilities. WBI Energy's proposal to utilize its current generally-applicable Rate Schedule IT rate is consistent with Commission policy,²³ and we will approve it.

*reh'*g, 107 FERC ¶ 61,164 (2004).

²⁰ *WBI Energy Transmission, Inc.*, 148 FERC ¶ 61,115 (2014).

²¹ Pub. Law 115-97, 131 Stat. 2054 (Dec. 22, 2017).

²² Certificate Policy Statement, 88 FERC at 61,746.

²³ See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,110, at P 23 (2017); *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061, at P 35 (2017).

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2. Fuel Rate and Electric Power Costs

23. WBI Energy proposes to charge its generally-applicable system-wide fuel and loss retention percentage and electric power rate for transportation on the project.²⁴ In support of its proposal, WBI Energy prepared a fuel study showing the project's impact on fuel use on WBI Energy's system.²⁵ WBI Energy's study shows that the proposed bi-directional flow would decrease the total compressor horsepower and fuel used as transportation volumes related to the project increase on WBI Energy's Sheyenne Subsystem because the existing Steele and Cleveland Compressor Stations would be offline when the proposed Mapleton Compressor Station is utilized.

24. In addition, the Mapleton Compressor Station will use less electricity because it is more energy efficient than the Steele Compressor Station. As a result, the Sheyenne Subsystem would experience a net decrease in electric power used. Based on the overall reductions in fuel and electric power usage, the existing system customers will not incur increased fuel expenses or gas equivalent electric power costs. Therefore, we will approve WBI Energy's proposal to charge its generally applicable system-wide fuel and loss retention percentage and electric power rate.

3. Reporting Incremental Costs

25. To ensure that costs are properly allocated between WBI Energy's existing shippers and the incremental expansion shippers, we will require WBI Energy to keep separate books and accounting of costs and revenues attributable to the project capacity and incremental services using that capacity. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.²⁶ 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. 710.²⁷

²⁴ WBI Energy's currently effective system-wide fuel and loss retention is 1.686 percent and its daily electric power rate is \$1.472 per Dth for firm and interruptible transportation.

²⁵ See WBI Energy's July 13, 2017 Data Request Response at 1-3.

²⁶ 18 C.F.R. § 154.309 (2017).

²⁷ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008) (Cross-reference at 122 FERC ¶ 61,262).

C. Environmental Analysis

1. Pre-filing Review

26. On October 17, 2016, Commission staff granted WBI Energy's request to use the pre-filing process in Docket No. PF16-10-000. As part of the pre-filing review, on November 23, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register* on December 1, 2016,²⁸ and mailed to 396 interested entities, including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The NOI briefly described the project and the Commission's environmental review process, provided a preliminary list of issues identified by Commission staff, invited written comments on the environmental issues that should be addressed in the EA, and provided information about public scoping meetings to be held in the project area. The supplemental NOI established January 27, 2017, as the deadline for comments.

27. We received comments in response to the NOI from the North Dakota Department of Health; North Dakota State Water Commission; Minnesota Historical Society; Wild Rice Watershed District; the Cass County Joint Water Resource District; the Red Lake Band of Chippewa Indians; three landowners; and the Teamsters National Pipeline Labor Management Cooperation Trust.

2. Application Review

28. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),²⁹ Commission staff evaluated the potential environmental impacts associated with the construction and operation of the WBI Energy's Valley Expansion Project in an environmental assessment (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, socioeconomics, cumulative impacts, and alternatives. All substantive environmental

²⁸ 81 Fed. Reg. 86,707 (2016). *See also* 82 Fed. Reg. 1330 (2017) (publishing a supplemental NOI to extend the scoping period and provide additional time to file comments).

²⁹ 42 U.S.C. §§ 4321 *et seq.* (2012). *See also* 18 C.F.R. pt. 380 (2017) (Commission's regulations implementing NEPA).

comments received in response to the NOI and the notice of WBI Energy's application were addressed in the EA.

29. The EA was issued for a 30-day comment period, mailed to all stakeholders on the Commission staff's environmental mailing list, and placed into the public record on September 20, 2017. The Commission received comments on the EA from the Minnesota Pollution Control Agency (Pollution Control Agency), the Minnesota Department of Natural Resources (Minnesota DNR), the Teamsters National Pipeline Training Fund, and the North Dakota State Water Commission. The Teamsters National Pipeline Training Fund's letter was in support of the project and the others provided comments on various issues discussed in the following sections.

3. Comments on the EA

a. Water Resources

30. The Pollution Control Agency states that the EA does not identify surface waters in Minnesota that are listed as special or impaired,³⁰ which would require additional stormwater best management practices, as required by the Minnesota National Pollution Discharge and Elimination System/State Disposal System (NPDES/SDS) General Construction Stormwater Permit. We disagree. The EA discusses special or impaired waters in Minnesota in the Surface Water Resources/Waterbodies section.³¹ The EA identifies no special waters in the project area and identifies the Buffalo River at MP 15.2 and the Red River of the North at MP 18.5 in Minnesota as impaired.³² To prevent adverse impacts to these resources, WBI Energy will use the horizontal directional drilling (HDD) technique to cross these waterbodies. In addition, WBI Energy will apply for all necessary federal, state, and local permits, including those identified by the Pollution Control Agency.

31. The Pollution Control Agency also states that the proposed pipeline will cross Felton Creek, which is a trout stream, and should be considered a special water. We note, however, that while the Minnesota DNR has designated portions of Felton Creek as a

³⁰ The list of special or impaired waters is available at <https://www.pca.state.mn.us/water/minnesotas-impaired-waters-list>.

³¹ See EA at 35.

³² The EA also identifies the Rush River and Maple River as impaired, but the project would cross them in North Dakota. *Id.*

trout stream, the project will not cross those portions of the creek.³³ Specifically, portions of Felton Creek crossing through Sections 12, 13, and 14 within Township 141 North, Range 46 West are designated trout streams. The project would avoid these areas and would only cross Felton Creek at MP 3.0 in Section 8 within Township 141 North, Range 46 West. Further, WBI Energy proposes to use the HDD technique to avoid and minimize impacts on Felton Creek to the extent practicable. Thus, we find the project would not impact the designated trout stream portions of Felton Creek.

32. The Pollution Control Agency maintains that the EA does not specify the quantity of impervious surfaces created by the project. If the project results in one or more acres of new impervious surfaces, the Pollution Control Agency contends that a stormwater management system that meets the requirements of the NPDES/SDS permit must be designed to treat runoff from the new impervious surfaces. WBI Energy proposes two permanent aboveground structures 14 miles apart in Minnesota as part of the project: the Viking Interconnect (0.5 acre) at MP 0.0 and Mainline Block Valve #1 (approximately 0.3 acre) at MP 14.4. Should the impervious area created by the proposal total one or more acres, WBI Energy states that it will design a stormwater management system that meets the requirements of Part III D of the NPDES/SDS permit.

33. Therefore, we agree with the EA's conclusion that the project's effect on water resources would be minor and temporary.³⁴

b. Wetlands

34. The Pollution Control Agency and the Minnesota DNR raise concerns about alteration of groundwater flows and potential impacts on calcareous fens³⁵ near Felton Creek and the Viking Interconnect. The Minnesota DNR maintains a list of known calcareous fens pursuant to Minnesota law.³⁶ Based on this information and the Minnesota DNR's October 20, 2017 comment, the nearest known calcareous fens are

³³ See MINN. STAT. § 6264.0050, subpt. 4 (2017) (listing designated trout streams and portions of streams).

³⁴ EA at 38.

³⁵ Calcareous fens are rare and distinctive wetlands characterized by a substrate of non-acidic peat and dependent on a constant supply of cold, oxygen-poor groundwater rich in calcium and magnesium bicarbonates.

³⁶ See MINN. STAT. § 103G.223 (2017).

more than one mile northeast and southeast from the project footprint.³⁷ In addition, section B.3.3 of the EA notes that WBI Energy's wetland delineation found no wetlands at the Viking Interconnection or along the pipeline route within one mile of the Viking Interconnection.³⁸ Thus, we find that the project would not directly affect any calcareous fens.

35. The Minnesota DNR states that open trenching, HDDs, and guided bore methods for installing the pipeline have the potential to breach geologic confining layers that keep the groundwater system pressurized. Such a breach could reduce the hydraulic head in the calcareous fens, resulting in less groundwater discharge to the fens. As stated above, the nearest known calcareous fens are more than one mile northeast and southeast of the project. Further, as discussed in section B.3.1 of the EA, construction of the pipeline and aboveground facilities is typically confined to a depth of no more than 10 feet below the ground surface.³⁹ Supported by data submitted by Minnesota DNR, we find that WBI Energy's trench construction will occur above the near-surface water table (unconfined) aquifer, which generally ranges from 12 to 18 feet below the ground surface. The trench construction similarly will not breach the deeper, confined aquifer, which appears to be at a depth more than 50 feet.⁴⁰

36. As for HDD impacts, WBI Energy proposes to cross Felton Creek by HDD. The drill profile of the crossing of Felton Creek shows a shallow 10-foot-deep drill below the stream bottom (i.e., about 20 feet below the ground surface).⁴¹ Because the HDD crossing at Felton Creek is far from the nearest known calcareous fens (i.e., about 3.5 miles) and the project facilities are downgradient from the fens, the relatively shallow HDD will not impact the calcareous fens and the groundwater flow that supplies the fens.

³⁷ See the Minnesota DNR's Oct. 20, 2017 Comment on the EA (identifying the location of the calcareous fens).

³⁸ EA at 40. See also Appendix 2A of Resource Report 2 of WBI Energy's Application (wetland and waterbody delineation report).

³⁹ EA at 28. An exception is the proposed HDD at Felton Creek, as discussed in PP 36 and 37. WBI Energy also proposes to utilize the HDD method at three other locations in Minnesota, each of which are at least 15 miles away from any known fens and will be at depths greater than 20 feet below the ground surface. *Id.* at 33.

⁴⁰ See Regional Hydrogeologic Assessment Southern Red River Valley, Minnesota appended to Minnesota DNR's Oct. 20, 2017 Comment on the EA.

⁴¹ See WBI Energy's Application, Appendix 1F of Resource Report 1 .

37. In addition, to verify the EA's conclusions regarding localized and temporary impacts on the groundwater at the Felton Creek HDD crossing and the potential for stream depletion, we have added Environmental Condition 16, requiring WBI Energy to conduct and file a geotechnical investigation of the Felton Creek crossing in order to characterize the hydrogeologic conditions (stratigraphy and lateral and vertical groundwater flow) prior to construction. .

38. The Minnesota DNR also has concerns that the pipeline trench could act as a preferred flow path for groundwater, resulting in a loss of water from wetland complexes surrounding, and in the vicinity of the calcareous fens. Moreover, the Minnesota DNR contends that there is a potential for stream depletion with possible drainage of nearby wetlands as stream flow is directed along the pipeline trench at the crossing of Felton Creek. These impacts are unlikely to occur. As depicted by shallow groundwater elevation contours on mapping provided by the Minnesota DNR, the pipeline facilities are hydraulically downgradient of known fen locations.⁴² Furthermore, the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*⁴³ and *Wetland and Waterbody Construction and Mitigation Procedures*⁴⁴ require the installation of trench breakers (which typically consist of sand bags or polyurethane foam keyed into the trench walls), where needed, to avoid draining a waterbody or wetland. WBI Energy will install pipeline trench breakers to address the Minnesota DNR's concerns about the project's potential impact on calcareous fens. In its comments, the Minnesota DNR acknowledges this mitigation measure and requests that WBI Energy submit installation plans and specification plan sheets for the Minnesota DNR's comment and review prior to construction to determine whether a calcareous fen management plan

⁴² See the Minnesota DNR's Oct. 20, 2017 Comment on the EA (identifying the location of the calcareous fens) at 7.

⁴³ The Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* establishes baseline mitigation measures that project sponsors must implement, except when specifically exempted by Commission staff, to minimize erosion and enhance revegetation associated with their proposed projects. It is available at <https://www.ferc.gov/industries/gas/enviro/plan.pdf>.

⁴⁴ The Commission's *Wetland and Waterbody Construction and Mitigation Procedures* establishes baseline mitigation measures that project sponsors must implement, except when specifically exempted by Commission staff, to minimize the extent and duration of project-related disturbance on wetlands and waterbodies. It is available at <https://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

would be required. We note that Minnesota DNR will have an opportunity to directly request such information from WBI Energy through its permitting process.

39. The Minnesota DNR expresses concern that WBI Energy's proposed open-cut of an unnamed creek at MP 0.5 could deplete the creek and redirect streamflow down the pipeline, thereby draining nearby wetlands. WBI Energy noted in its application that its field study did not show the presence of a creek at MP 0.5 and concluded the waterbody may no longer functionally or physically exist.⁴⁵ In the event, we believe that the Minnesota DNR's concern is unlikely to occur. WBI Energy will install trench breakers, where needed, to avoid draining a waterbody or wetland. Thus, if the waterbody is present, WBI Energy's implementation of the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* will minimize impacts and ensure proper restoration.⁴⁶

40. The Pollution Control Agency states that WBI Energy should specify the best management practices it will use to prevent sediment from entering surface waters with temporary crossings. The EA discusses temporary crossings using equipment bridges and states that, if bridges are required, WBI Energy would install them utilizing the construction and mitigation measures specified in the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*.⁴⁷ While the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* are performance based and do not prescribe specific methods of erosion controls, section V.B.5.b of the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* states that equipment bridges must be constructed and maintained "to allow unrestricted flow and to prevent soil from entering the waterbody."⁴⁸ We find that WBI Energy's commitment to this performance measure is acceptable and implementation will be confirmed through WBI Energy's and Commission staff's compliance inspections.

⁴⁵ See Resource Report 2 of WBI Energy's Application at 2-17 to 2-18.

⁴⁶ WBI Energy states that it consulted with the Minnesota DNR about this crossing as part of its application for a License to Cross Public Lands and Waters, which the Minnesota DNR issued. In the license, the Minnesota DNR approved the planned open-cut crossing of the unnamed creek. See WBI Energy's Oct. 23, 2017 Response to the Comments on the EA at 4.

⁴⁷ See EA at 13.

⁴⁸ See the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* at 11.

c. Wildlife

41. The Minnesota DNR comments on potential issues related to aquatic invasive species and erosion control measures. Specifically, the Minnesota DNR states that to reduce the risk of spreading zebra mussels, an invasive aquatic species, it requires a state water-use permit to appropriate, divert, or transport infested waters. The permit would contain specific restrictions that limit the timing of use (based on water temperature) and the location of the discharge. The Minnesota DNR also recommends that sediment barriers, such as silt fencing, be removed after vegetation is established to prevent these barriers from restricting wildlife movement. The Minnesota DNR's recommendations are covered by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*, which WBI Energy must comply with. For example, as required by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*, WBI Energy must coordinate with the appropriate agencies, including the Minnesota DNR, to prevent the introduction or spread of invasive species resulting from construction and restoration activities. In addition, the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* requires sediment barriers, such as silt fencing, to be removed after vegetation is established.⁴⁹ Further, WBI Energy will apply for all permits required for construction of the project, including the water-use permit from the Minnesota DNR.

d. Other Permitting Requirements

42. The North Dakota State Water Commission and the Pollution Control Agency are concerned about various permit and project construction review requirements. WBI Energy has committed to applying for all necessary federal, state, and local permits, including those identified by the North Dakota State Water Commission (e.g., water, sovereign land, drainage, and construction permits) and those identified by the Pollution Control Agency. In addition, WBI Energy will request a floodway review from the North Dakota State Engineer, as required by state law. WBI Energy will also comply with all NPDES/SDS permit requirements and the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures*.

e. I-29 Variation

43. WBI Energy developed the I-29 Variation, which diverges from the originally proposed route near MP 20.8 and rejoins the original route near MP 24.4, to avoid

⁴⁹ See the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* at 17.

construction workspace associated with the Fargo-Moorhead Area Diversion Channel⁵⁰ in Cass County, North Dakota.⁵¹ The EA concludes that the I-29 Variation would provide significant environmental advantages to the proposed route because it addresses the Fargo-Moorhead Diversion Authority's concerns about the overlap of construction workspaces, eliminates two crossings of the Sheyenne River, and addresses concerns raised by the Charles Larson Trust about potential drain tile impacts.⁵² Even though the I-29 Variation is 0.2 miles longer than the original 37.3-mile-long route, the EA recommends adoption of the I-29 Variation because of its significant advantages.⁵³ We agree and will require WBI Energy to adopt the I-29 Variation, as provided in Environmental Condition 15.

44. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with WBI Energy's application and supplements, 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. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

⁵⁰ The Fargo-Moorhead Diversion Channel is a federal-state project designed to mitigate the impacts of flooding in the Red River Valley. The Fargo-Moorhead Diversion Authority oversees and administers the Fargo-Moorhead Area Diversion Channel.

⁵¹ EA at 116.

⁵² *See id.* at 116-119. *See* Helen Nygren's April 3, 2017 Comment (Docket No. PF16-10).

⁵³ EA at 119.

45. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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.⁵⁴

46. At a hearing held on February 15, 2018, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to WBI Energy, authorizing it to construct and operate the proposed Valley Expansion Project, as described and conditioned herein, and as more fully described in the application as supplemented.

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

(1) WBI Energy's Valley Expansion Project being constructed and made available for service within 3 years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;

(2) WBI Energy's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) WBI Energy's compliance with the environmental conditions listed in the appendix to this order; and

⁵⁴ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that 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).

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(4) WBI Energy's filing written statements affirming that it has executed firm contracts for volumes and service terms equivalent to those in its precedent agreements, prior to the commencement of construction.

(C) WBI Energy is required to charge its revised incremental recourse reservation charge, as stated in its January 17, 2018 data response, for transportation on the project, as more fully discussed above.

(D) WBI Energy's proposal to charge its system recourse commodity charge for transportation on the project is approved, as more fully discussed above.

(E) WBI Energy's proposal to charge its generally applicable system-wide fuel and loss retention percentage and electric power rate for transportation on the project is approved.

(F) WBI Energy shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(G) WBI Energy shall file actual tariff records no earlier than 60 days, and no later than 30 days, prior to the date the project facilities go into service.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

1. WBI Energy 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. WBI Energy must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order, and 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 the conditions of the order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, WBI Energy shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel shall be informed of the EIs' 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, and shall include the staff's recommended I-29 Variation identified in section C.3.2.1 of the EA. **As soon as they are available, and before the start of construction**, WBI Energy 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.

WBI Energy's exercise of eminent domain authority granted under the NGA section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. WBI Energy's right of eminent domain granted under NGA 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. WBI Energy 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 the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements that 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 the authorization and before construction begins**, WBI Energy shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. WBI Energy must file

revisions to the plan as schedules change. The plan shall identify:

- a. how WBI Energy 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 WBI Energy 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, 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 instructions WBI Energy 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 WBI Energy's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) WBI Energy would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for the:
 - i. completion of all required surveys and reports;
 - ii. environmental compliance training of onsite personnel;
 - iii. start of construction; and
 - iv. start and completion of restoration.
7. WBI Energy shall employ at least one EI per construction spread. The EI(s) 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, WBI Energy 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 shall also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on WBI Energy'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 work in environmentally sensitive areas;
 - c. 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);
 - 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 that 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 WBI Energy from other federal, state, or local permitting agencies concerning instances of noncompliance, and WBI Energy's response.
9. WBI Energy must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, WBI Energy must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. WBI Energy must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization shall 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 authorized facilities in service**, WBI Energy 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 WBI Energy 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. **Prior to construction in proximity to the Fargo-Moorhead Area Diversion Project**, WBI Energy shall file with the Secretary documentation regarding its consultation with the Diversion Authority, including updated mitigation measures and/or a Memorandum of Understanding.

13. WBI Energy **shall not begin construction** of facilities **and/or use** of all staging, storage, or temporary work areas and new or to-be improved access roads in North Dakota, **until**:
 - a. WBI Energy files with the Secretary:
 - i. reports, studies, or plans of additional cultural resources surveys in North Dakota;
 - ii. site-specific avoidance and/or treatment plan(s), as required; and
 - iii. comments on reports and plans from the North Dakota State Historic Preservation Office (SHPO);
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the Commission staff reviews, and the Director of OEP approves, the cultural resources reports and plans, and notifies WBI Energy in writing that avoidance and/or treatment measures, as required, may be implemented and/or construction may proceed.

All materials 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: “**CUI//PRIV - DO NOT RELEASE.**”

14. WBI Energy shall file with the Secretary noise surveys for the Mapleton Compressor Station **no later than 60 days after placing the station into service**. If a full power load condition noise survey is not possible, WBI Energy shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive area (NSA), WBI Energy shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.

15. **Prior to construction**, WBI Energy shall adopt the I-29 Variation and file with the Secretary:
 - a. revised alignment sheets for review and written approval by the Director of OEP;
 - b. addendum reports documenting that areas impacted by the I-29 Variation have been surveyed for cultural resources and natural resources (*i.e.*, wetlands, waterbodies, and sensitive species and habitats), and that the North Dakota SHPO has reviewed WBI Energy's addendum cultural resources survey report and concurs with its findings; and
 - c. a HDD noise analysis identifying the existing and projected noise levels at each NSA within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed an L_{dn} of 55 dBA at any NSA, WBI Energy shall file with the noise analysis a mitigation plan to reduce the projected noise levels for the review and written approval by the Director of OEP. During drilling operations, WBI Energy shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an L_{dn} of 55 dBA at the NSAs.

16. **Prior to construction**, WBI shall conduct and file with the Secretary a geotechnical investigation of the Felton Creek crossing, for review and written approval by the Director of OEP, in order to characterize hydrogeologic conditions (stratigraphy, lateral, and vertical groundwater flow) at the crossing.

Document Content(s)

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