

131 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Marc Spitzer, Philip D. Moeller
and John R. Norris.

Ruby Pipeline, L.L.C.

Docket Nos. CP09-54-000
CP09-54-001

Accrual of Allowance of Funds For
Funds Used During Construction

AD10-3-000

ORDER ISSUING CERTIFICATE AND
GRANTING IN PART AND DENYING IN PART
REQUESTS FOR REHEARING AND CLARIFICATION

(Issued April 5, 2010)

1. On September 4, 2009, in Docket No. CP09-54-000, the Commission issued a preliminary determination addressing the non-environmental issues raised by Ruby Pipeline, L.L.C.'s (Ruby) application under section 7(c) of the Natural Gas Act (NGA)¹ for certificate authorization to construct and operate a new 675-mile-long, 42-inch-diameter pipeline, with a firm transportation capacity of 1,500,000 dekatherms (Dth) per day, to transport natural gas from Rocky Mountain production areas to west coast markets.² The proposed pipeline would extend from the Opal Hub in southwest Wyoming to the Malin Hub near the Oregon-California border. The Commission's decision regarding final authorization for the construction of the Ruby project was reserved pending completion of the Commission's environmental review. Ruby and the Interstate Natural Gas Association of America (INGAA) filed requests for rehearing and/or clarification of the September 2009 Order.

¹ 15 U.S.C. § 717f (2006).

² *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009) (September 2009 Order).

2. The Commission has completed its environmental analysis of the Ruby project, and for the reasons discussed below, grants Ruby's requested certificate authorizations. This order also grants rehearing on the following issues: (1) allocation of costs and crediting of revenues to interruptible and short-term firm services; (2) the usage charge based on 90 percent projected utilization; (3) recovery of voluntary greenhouse gas costs; and (4) allowance for funds used during construction (AFUDC). This order denies rehearing on the following issues: (1) design of the proposed recourse reservation rates based on 95 percent of the pipeline's capacity; (2) the proposed cost and revenue true-up provisions; and (3) the proposed recovery of mandatory greenhouse gas costs.

I. Background and Proposal

3. On January 27, 2009, Ruby filed an application pursuant to NGA section 7(c)³ and the Commission's regulations requesting: (1) certificate authorization to construct and operate a new interstate pipeline from the Opal Hub in Wyoming to interconnections near Malin, Oregon, with the existing facilities of Pacific Gas and Electric Company (PG&E), Gas Transmission Northwest Corporation (GTN), and Tuscarora Gas Transmission Company (Tuscarora); (2) a blanket certificate under Part 157, subpart F, of the Commission's regulations authorizing Ruby to construct, operate, and abandon eligible facilities;⁴ and (3) a blanket certificate under Part 284, subpart G, of the Commission's regulations authorizing Ruby to provide open-access transportation services.⁵

4. Ruby's proposed pipeline would consist of: (1) a 675.2-mile-long, 42-inch-diameter mainline commencing at the Opal Hub in Lincoln County, Wyoming, extending westward through Lincoln and Uinta Counties in Wyoming; Rich, Cache, and Box Elder Counties in Utah; Elko, Humboldt, and Washoe Counties in Nevada; Lake and Klamath Counties in Oregon, and terminating at the Malin Hub in Klamath County, Oregon; and (2) a 2.6-mile-long, 42-inch-diameter lateral pipeline extending from the Malin Hub to an interconnection with PG&E's system at the Oregon/California border.

5. Ruby also proposes to construct four receipt meter stations: the Diamondville, Pearl Creek, and Emerald Springs Receipt Meter Stations interconnecting with Enterprise Products Partners, L.P., Williams Energy Service, and Colorado Interstate Gas Company (CIG) at milepost 0.0 of the mainline in Lincoln County, Wyoming;⁶ and the Topaz

³ 15 U.S.C. § 717f (2006).

⁴ 18 C.F.R. §§ 157.201-218 (2009).

⁵ 18 C.F.R. §§ 284.221-227 (2009).

⁶ These three meter stations will be located at CIG's existing King Compressor

Ridge Meter Station to receive gas from Questar Overthrust Pipeline Company at milepost 5.7 of the mainline in Lincoln County, Wyoming.

6. In addition, Ruby proposes to install four bi-directional delivery points: the Opal Valley Meter Station, interconnecting with Paiute Pipeline Company at milepost 430.0 in Humboldt County, Nevada; and the Sapphire Mountain, Turquoise Flats, and Onyx Hill Meter Stations interconnecting with Tuscarora, GTN and PG&E, respectively, at milepost 675.2 in Klamath County, Oregon.

7. In the September 2009 Order, we determined that contingent on a favorable result in our pending environmental review, the proposed Ruby project will be required by the public convenience and necessity. The September 2009 Order rejected several of Ruby's rate proposals, including the allocation of costs and crediting of revenues to interruptible and short-term firm services; recourse reservation rates based on 95 percent of the pipeline's capacity; a usage charge based on 90 percent projected utilization; the cost and revenue true-up provisions; recovery of voluntary and mandatory greenhouse gas costs; and accrual of AFUDC prior to the date Ruby filed its certificate application. Ruby requested rehearing and/or clarification on each of these determinations.

8. INGAA requested rehearing of the rejection of early accrual of AFUDC. The Wyoming Pipeline Authority (WPA)⁷ filed an answer to Ruby's request for clarification supporting greenhouse gas mitigation cost recovery, a recourse reservation rate based on 95 percent of the pipeline's capacity, and early accrual of AFUDC. The California Public Utilities Commission (CPUC) filed an answer to Ruby's request for clarification supporting the inclusion of greenhouse gas costs into the pipeline's initial rates.

II. Notices and Motions to Intervene

9. Notice of Ruby's application was published in the *Federal Register* on February 17, 2009.⁸ The Commission issued a draft environmental impact statement (EIS) on June 19, 2009, that addressed the issues raised during the scoping period, with a

Station.

⁷ WPA explains that it is charged by the State of Wyoming with facilitating the development of pipeline infrastructure inside and outside the state to enhance natural gas development within the state and to develop and maintain access to markets for the state's natural gas resources, with a core element of its mandate being to promote increased interstate pipeline take-away capacity for Wyoming gas.

⁸ 74 Fed. Reg. 7412.

45-day public comment period.⁹ In response to the draft EIS, Center for Biological Diversity, Toiyabe Chapter of the Sierra Club, and Western Watersheds Project (Western Watersheds) filed timely, unopposed motions to intervene before August 10, 2009, when the comment period on the draft EIS ended.¹⁰ Defenders of Wildlife filed a late motion to intervene on August 12, 2009, two days after the end of the comment period for the draft EIS.

10. INGAA filed a late motion to intervene with its request for rehearing of the AFUDC issue. A petitioner for late intervention bears a higher burden to show good cause for late intervention after issuance of a merits order in a proceeding, and generally it is Commission policy to deny late intervention at the rehearing stage, even when the petitioner claims that the decision establishes a broad policy of general application.¹¹ In the September 2009 Order on rate and other non-environmental matters raised by Ruby's certificate application, the Commission addressed the issue of early accrual of AFUDC. However, as discussed below, based on concerns raised in this and other contemporaneous proceedings, the Commission decided to hold a technical conference to revisit its AFUDC policy. The Commission was reconsidering its policy regarding early accrual of AFUDC when INGAA filed its motion to intervene.

11. In view of the above considerations, we find that Defenders of Wildlife and INGAA have demonstrated an interest in this proceeding and granting their late motions to intervene at this stage of the proceeding will not cause undue delay or otherwise prejudice the proceeding or other parties. Therefore, for good cause shown, we grant the late motions to intervene pursuant to Rule 214(d) of our Rules of Practice and Procedure.¹²

⁹ 74 Fed. Reg. 30570 (June 26, 2009).

¹⁰ Although the time for intervention established by the Commission's notice of Ruby's certificate application had passed, section 380.10 of the Commission's regulations provides that any person who files a motion to intervene on the basis of a draft EIS will be deemed to have filed a timely motion as long as the motion is filed within the comment period for the draft EIS. 18 C.F.R. § 380.10 (2009).

¹¹ *See, e.g., Cameron LNG, L.L.C.*, 112 FERC ¶ 61,146, at P 6 (2005).

¹² 18 C.F.R. § 385.214(d) (2009).

III. Requests for Rehearing and/or Clarification

12. Ruby and INGAA submitted timely requests for rehearing and/or clarification. The CPUC and WPA submitted answers to Ruby's request for clarification. Although styled as answers to requests for clarification, the CPUC and WPA answers comment on specific rehearing issues addressed in this order, and as such will be considered answers to the requests for rehearing. Although our Rules of Practice and Procedure do not allow answers to requests for rehearing,¹³ we may, for good cause, waive this provision,¹⁴ and we do so in this instance as CPUC's and WPA's answers provide information that assists in our decision-making process. The issues raised in the requests for rehearing are addressed below.

IV. Discussion

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

A. Application of the Commission's Criteria for Considering Proposed New Facilities

14. In the September 2009 Order, we balanced the proposed project's predicted benefits against its potential adverse impacts on existing customers, existing natural gas transportation service providers, landowners, and communities, as described in the Commission's policy statement on the *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement).¹⁶ In doing so, we sought to give appropriate consideration to the need for a new project, the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions to the environment.

15. We found that Ruby's proposal is consistent with the Certificate Policy Statement because any adverse impacts of the proposal on competing pipelines and their existing

¹³ 18 C.F.R. § 385.213(a) (2009).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2009).

¹⁵ 15 U.S.C. 717f(c) and (e) (2006).

¹⁶ 88 FERC ¶ 61,277 (1999), *orders clarifying policy*, 90 FERC ¶ 61,128 (2000) and 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

customers will be the result of fair competition. We noted that 58 percent of the planned pipeline route will be sited on federal and state lands and that Ruby had obtained landowner permission to survey 99 percent of the proposed right-of-way.¹⁷ We further found that because the proposed pipeline will bring domestic gas supplies to markets that now depend on declining imports of Canadian gas supplies, any adverse impacts on existing pipelines currently transporting Canadian gas and their shippers may be mitigated by the new opportunities that Ruby's new pipeline will create for the existing pipelines to transport gas from additional sources for their shippers.¹⁸

16. In the September 2009 Order, we stressed that final approval would depend on the outcome of our then-pending environmental review and, further, that our determinations in that order did not preclude modifying the project as needed to respond to findings following the completion of our environmental review. We have now completed our environmental review of the Ruby pipeline project, and find that the modifications and environmental mitigation conditions described in the environmental section below are necessary to reduce the adverse environmental impacts of the proposed project.

B. Rates and Tariff Issues Raised in Requests for Rehearing and in Comments

1. Allocation of Costs and Crediting of Revenues to Interruptible and Short-Term Firm Services

17. Ruby proposed to allocate five percent of its total cost of service to interruptible and short-term firm services, as well as to credit to its shippers 50 percent of revenues from such services, once the pipeline is fully subscribed and revenues exceed the cost of service. The September 2009 Order found that Ruby's proposal was inconsistent with Commission policy that requires a pipeline either fully allocate costs to interruptible services or credit 100 percent of the revenues from interruptible customers to those customers.¹⁹

18. On rehearing, Ruby disagrees with the Commission's conclusion that Ruby's proposed allocation of costs to interruptible services and crediting of interruptible revenues to shippers is inconsistent with Commission policy. Ruby states that it should not be penalized for proposing to share some interruptible revenues with its firm shippers

¹⁷ September 2009 Order at P 40.

¹⁸ *Id.* P 37.

¹⁹ *Id.* P 55.

when Commission precedent would permit Ruby to keep revenues it receives in excess of the costs allocated to these services.

19. We agree. The rationale for requiring crediting of revenues generated by interruptible service on new pipelines is to ensure that pipeline revenues remain within the projected cost of service and reduce the amount customers pay for service, effectively lowering the rates to the level that would result if the appropriate level of costs were allocated to the projected interruptible services.²⁰ Here, Ruby proposes to allocate five percent of its cost of service to its interruptible services and thus under our policy is not required to credit interruptible revenues. Ruby's proposal to also credit 50 percent of the interruptible and short-term firm revenues, once the pipeline is fully subscribed and revenues exceed the cost of service, is an additional benefit to its customers and effectively operates to lower their rates. As such, we find that the revenue crediting proposal is not inconsistent with the Commission's policy on interruptible revenues and we will grant rehearing on this issue.

2. Recourse Reservation Rates Based on Less Than 100 Percent Capacity of the Pipeline's Capacity

20. The September 2009 Order found that Ruby's proposal to design recourse reservation rates based on 95 percent of the annual average capacity of the pipeline is contrary to the Commission policy that recourse rates must be based on 100 percent of the capacity of the system.²¹

21. On rehearing, Ruby states that the Commission relied on a misstatement of Commission policy. Ruby argues that the Commission's regulations require rates to be designed on projected units of service and that Ruby's proposal to use 95 percent of the average annual capacity is reasonable. Ruby notes that average annual capacity, which reflects the effect of seasonal ambient temperatures on available capacity, is already 1.7 percent greater than the maximum annual sustainable capacity. Furthermore, the requirement to design rates based on 100 percent of capacity means that Ruby cannot recover its cost of service since the pipeline will have some downtime for maintenance.

²⁰ See, e.g., *Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005); *Maritimes & Northeast Pipeline, L.L.C. and Portland Natural Gas Transmission Sys.*, 81 FERC ¶ 61,166, at 61,725 (1997).

²¹ September 2009 Order at P 44.

22. WPA states that the Commission should modify its traditional utility ratemaking requirements to reflect the realities of expanding the pipeline infrastructure in growing supply areas to meet likely future demand. WPA contends that it is desirable to design and construct transportation facilities to meet both current and future demand in the environmentally sensitive areas of the Rocky Mountain producing region in order to reduce the environmental impact of construction activities. WPA suggests that the Commission accept Ruby's use of 95 percent of its firm capacity as the basis for the billing determinants, but require Ruby to recalculate its reservation charge utilizing the resulting larger billing determinants when 100 percent of the capacity is subscribed by firm shippers. WPA asserts that this alternative would afford Ruby the opportunity to recover its costs during the interim period of under-subscription, while protecting shippers and the public from over-earning by the pipeline of its authorized return when the pipeline is fully subscribed.

23. We disagree. In contrast to a rate case where rates of an operating pipeline are designed based on the projected usage of the pipeline, for a new pipeline initial rates are generally designed based on the engineering design capacity of the pipeline.²² This approach ensures that a pipeline constructing facilities is placed at risk for underutilization of the facilities if it does not contract with customers for the full capacity of the pipeline. The pipeline is given an opportunity to recover its full costs if it is fully subscribed. If it does not sell the full capacity, the pipeline has the option of filing a section 4 rate proceeding to propose shifting the cost burden onto shippers.

24. The Commission has departed from its general policy only in limited situations.²³ The determining factors in those limited situations are not present here. Ruby has not

²² See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 57 (2003).

²³ For example, in *Pacific Gas Transmission Co.*, 70 FERC ¶ 61,016, at 61,045, *order on reh'g*, 71 FERC ¶ 61,268, at 62,070 (1995), the Commission found that constructing a 12-inch pipeline rather than a 10-inch pipeline was preferable because additional markets on the pipeline were likely, the cost difference was small, and no further environmental disturbance would be required. The Commission gave the pipeline the option of designing its initial rates based on the contract volumes for the first two years of operations after which the initial rates would be based on the design capacity. See also *East Tennessee Natural Gas, L.L.C.*, 114 FERC ¶ 61,122 (2006) (permitting the pipeline an option to design the incremental rate using lower contract commitments for a two-year period due to an operating constraint on an upstream gathering facility that limited the amount of gas that could be transported); *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at P 156 (2006) (allowing rates to be designed on lower contract commitments due to a downstream constraint on the Algonquin pipeline which limited

(continued...)

asserted that markets will be phased in or that initial utilization will be lower because the proposed pipeline has been sized to accommodate the addition of future markets. To the contrary, Ruby states that it expects to operate at a high utilization factor as a result of favorable supply pricing at the Opal Hub and its anticipated low variable costs, and that it expects to operate at a high load factor very quickly following the in-service date.²⁴ Ruby also states that it can downsize its capacity by reducing the number of compressor units if the total subscription is less than 1,500,000 Dth per day.²⁵ These factors support the conclusion that Ruby presumably has sized its pipeline facilities to match expected demand. If Ruby fully subscribes its pipeline, it will have the opportunity to recover its cost of service. For these reasons, we are not persuaded to depart from our long-standing policy of requiring that initial rates be based on 100 percent of capacity. Therefore, we deny rehearing and will require Ruby to base its initial recourse reservation rates on 100 percent of capacity. In the future, Ruby will have the right to file a section 4 rate case to revise its rates and the opportunity to propose rates based on projected units of service that take into account actual operating history.

3. Usage Charge Based on Projected 90 Percent Utilization

25. The September 2009 Order found that Ruby's proposal to use billing determinants annualized at a 90 percent load factor for its usage charge is inconsistent with Commission policy that recourse rates be based on the capacity of the system.²⁶ On rehearing, Ruby argues that the usage charge should be based on the expected utilization rate. Ruby contends that basing the usage charge on the assumption that 100 percent of the capacity under firm transportation contracts will be used is unreasonable and inconsistent with the requirement that pipelines be provided an opportunity to recover costs. Ruby states that its proposal is reasonable because it will allow it to fully recover the costs allocated to the usage charge if shippers utilize their firm capacity at a more realistic and probable 90 percent rate.

take-away capacity from the LNG terminal).

²⁴ See Ruby, January 27, 2009 Application at 15. Ruby states that it believes that the September 2009 Order misstated Commission intent when it directed Ruby to revise its recourse usage charge for FT services to be set at the 100 percent load factor equivalent of the reservation rate. Ruby is correct that the September 2009 Order should have stated that the recourse usage charge should be based on 100 percent of capacity, i.e., calculated using a 100 percent load factor to determine the number of billing units.

²⁵ *Id.* at 18.

²⁶ September 2009 Order at P 44.

26. As discussed above, we are denying Ruby's request for rehearing that it be allowed to base its recourse *reservation* rates on 95 percent of capacity. Thus, Ruby's recourse reservation rates will be based on 100 percent of capacity as required by the September 2009 Order, ensuring that Ruby's rates generally comply with Commission policy. Therefore, we will grant rehearing to allow Ruby to use a projected 90 percent utilization rate for its *usage* charge to recover the minimal variable costs that comprise the usage charge. The Commission notes that it has accepted pipeline proposals to base the usage charge on billing determinants that represent a load factor of less than 100 percent of the maximum capacity, especially for initial rates for new pipeline entities such as Ruby.²⁷ Further, Ordering Paragraph (J) of this order implements the September 2009 Order's finding that Ruby should be required to make a filing within three years after its in-service date to either justify its existing recourse rates or to propose alternative rates. The Commission and Ruby's shippers will have an opportunity at that time to review Ruby's rates to consider the appropriate load factor for the usage charge.

4. Cost and Revenue True-Up Provisions

27. The September 2009 Order approved Ruby's proposed monthly charge to recover electric costs related to the operation of the three electric-driven compressors that will be installed at Ruby's head station. The Electric Power Charge (EPC) will include the charges for electric power, such as a connection fee and demand and usage charges. The EPC will be paid by shippers on a pro-rata basis, based on the quantity of gas received by Ruby from the shippers, and will be adjusted quarterly. The September 2009 Order approved the EPC's recovery of costs associated with electric power but rejected certain provisions that Ruby sought to include in the EPC.²⁸ Specifically, in the September 2009 Order, the Commission rejected Ruby's proposal to include: (1) a cost and revenue true-up mechanism relating to fuel imbalances and gas balancing items in its EPC,²⁹ and (2) system imbalance resolution timing costs in a cash-out mechanism.³⁰ The September 2009 Order found that Ruby's proposal to track the changes in the value of over- or under-collections of gas fuel quantities and related gas balance items in the EPC, and to flow these changes in value through to the customers, was not just and reasonable

²⁷ See *Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331, at P 26-28 (2006); *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324, at P 33-35 (2004).

²⁸ September 2009 Order at P 63.

²⁹ *Id.* P 68.

³⁰ *Id.* P 70.

because it would not accurately track the costs that should be assigned to individual shippers.³¹ We also found that Ruby's proposal to include system imbalance resolution timing costs in a cash-out mechanism was inappropriate because it could allow Ruby to gain or lose money on the differential between the cost of gas valued at the cash-out price and the ultimate cost of the actual purchases.

28. On rehearing, Ruby argues that its proposal will keep Ruby and its shippers volumetrically and economically neutral by tracking all activities that can affect the fuel, lost and unaccounted for gas, and gas balance on Ruby's system. Ruby asserts that the costs it seeks to recover are legitimate costs of doing business as an interstate pipeline, and that the timing differences of operational purchase and sale activities and the difference in price between purchases and sales, are costs for which the pipeline should not be required to be responsible and which Ruby's initial shippers have agreed to bear through the EPC charge.

29. Ruby also argues that these costs are not otherwise recoverable by the pipeline because they only relate to timing differences associated with operational purchases and sales of gas resulting from fluctuations in line pack. Ruby states that it is only with true operational cause that it would undertake operational purchases and/or sales, but that when these purchases and/or sales are made, there will be identifiable and known net costs or revenues that should be the responsibility of the shippers that cause the purchase and/or sale. Furthermore, Ruby states that it will only collect cash-related costs, and it will not include accrued costs in its EPC filing. In the alternative, if the Commission declines to reconsider its position on this issue, Ruby asks for permission to make fuel filings as often as quarterly so that fuel over- or under-recoveries do not produce significant cash value timing differences.

30. We deny Ruby's request for rehearing regarding the cost and revenue true-up for fuel imbalances and gas balancing items in its EPC and the imbalance resolution timing costs in the cash-out mechanism. It is well-established that when a pipeline is permitted to track changes in a particular cost item without regard to changes in other cost items, there should be a guarantee that changes in that cost item are tracked accurately.³² Ruby's proposal disaggregates the fuel-related imbalances from the shipper-related imbalances and proposes to incorporate the former in a cost and revenue true-up mechanism in the EPC and the latter in the cash-out mechanism.

³¹ *Id.* P 68.

³² *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 26 (2005).

31. Consistent with recent rejections of almost identical mechanisms proposed by Ruby's affiliate pipelines, Wyoming Interstate Company³³ and Colorado Interstate Gas Company,³⁴ we find that Ruby has not shown that its cost and revenue true-up mechanism or its system-wide imbalance resolution timing costs cash-out mechanism will accurately track the costs that should be assigned to individual shippers. Whether the imbalances are proposed to be resolved as a whole or separately, the proposal must assure accurate tracking of individual shipper costs. Ruby's proposal does not do so. Ruby provides no support that its bifurcated mechanism will guarantee the accuracy of costs tracked. Moreover, Ruby has not shown that it will be able to match the operational purchases and sales resulting from fluctuations in linepack with the specific shipper activity that may have caused the fluctuation. Therefore, we deny rehearing on this issue. However, we will grant Ruby's alternative request to file fuel adjustments quarterly, rather than annually.³⁵

5. Greenhouse Gas Cost Recovery Mechanism

32. In the September 2009 Order, the Commission rejected Ruby's proposal for recovery of mandatory greenhouse gas costs. The Commission cited *Southern Natural Gas Co. (Southern)*,³⁶ where it rejected a protested proposal to recover such costs, stating that no legislation currently imposes greenhouse gas costs.³⁷ Rejection of Ruby's proposal was without prejudice to any future proposal if it actually incurs such costs.

33. The September 2009 Order also rejected Ruby's proposal to recover voluntary offsets of greenhouse gas costs, stating that the proposal was overly vague and broad, and that Ruby had not provided details about these voluntary offsets, such as whether they are currently available and from whom. The rejection was without prejudice to Ruby filing additional tariff language and information identifying existing voluntary offsets, credits, or allowances.

34. Ruby seeks rehearing of the September 2009 Order's rejection of Ruby's proposal to implement mechanisms to recover both mandatory and voluntary greenhouse gas cost offsets. Ruby argues that its proposal represents the first time a transporter and its

³³ *Wyoming Interstate Co.*, 129 FERC ¶ 61,001, at P 31 (2009).

³⁴ *Colorado Interstate Gas Co.*, 128 FERC ¶ 61,117, at P 33-34 (2009).

³⁵ *See, e.g., Wyoming Interstate Co.*, 129 FERC ¶ 61,175, at P 4 (2009).

³⁶ 127 FERC ¶ 61,003 (2009).

³⁷ September 2009 Order at P 65.

shippers have voluntarily agreed to reduce carbon emissions in order to be a carbon neutral pipeline. Ruby contends that the Commission should encourage such path-breaking initiatives agreed to between a pipeline and its shippers. Ruby argues that Commission approval of the recovery mechanism for mandatory costs is essential to provide certainty for all parties. On rehearing, Ruby proposes to add definitions of the various offsets to its tariff and to revise its tariff provisions to describe in greater detail the anticipated measures it may undertake to achieve carbon neutrality. Ruby also provided additional information describing the various offsets, how they operate, and where they are available.

35. The CPUC commented that Ruby's proposed greenhouse gas mitigation cost provision is consistent with the CPUC's approval of Ruby's transportation arrangements with anchor shipper PG&E, and with California legislation and CPUC decisions establishing a greenhouse gas emissions performance standard for baseload generation of all load-serving entities.

36. We will grant rehearing to accept Ruby's proposed voluntary recovery of greenhouse gas costs because Ruby has now provided sufficient information to accept the proposal, and the proposal is supported by the parties. In its rehearing request, Ruby explains that it has discussed with its shippers the available methods for mitigation, displacement, and offset of the 523,000 metric tons of carbon dioxide or equivalent amounts of other greenhouse gases it estimates it may emit per year. Ruby states that the most likely measures include Renewable Energy Credits, Greenhouse Gas Allowances, and Greenhouse Gas Offsets, but anticipates that other valid products and services may become available in the future.

37. In its rehearing request, Ruby provided definitions of those terms, as well as revised tariff provisions that describe in greater detail the anticipated measures Ruby may undertake to achieve carbon neutrality.³⁸ Ruby also provided more detail and description of its plan to achieve carbon neutrality during the operation of the pipeline.³⁹ Furthermore, as provided in the proposed tariff provisions, shippers will have the right to review the costs in Ruby's periodic EPC filings and may challenge the costs incurred by Ruby with respect to whether the costs were prudently incurred and whether the amounts are properly calculated. We find that, with this additional information, we can accept the voluntary cost mechanism and grant rehearing.

³⁸ Ruby, October 5, 2009 Request for Rehearing at 27-29.

³⁹ Ruby, October 5, 2009 Request for Rehearing at 30-38.

38. The Commission will, however, deny rehearing on the mandatory cost recovery mechanism because Ruby has provided no new information to warrant deviating from our *Southern* precedent. Denial is without prejudice to any future proposal if Ruby actually incurs such costs. Until such time, it is uncertain what costs would be required to be recovered by a mandatory cost recovery mechanism and whether a specific mechanism would be required.

6. Accrual of Funds Used During Construction

39. In the September 2009 Order, relying on Accounting Release No. 5 (AR-5),⁴⁰ we denied Ruby's request to begin accruing AFUDC prior to the filing of its certificate application.⁴¹ We found that Ruby did not provide sufficient detail to demonstrate that the costs incurred before the filing of its certificate application on January 27, 2009, were in fact construction costs rather than costs related to preliminary survey and investigation-type activities.⁴²

40. On rehearing, Ruby argues that AR-5 was implemented before enactment of the National Environmental Policy Act (NEPA) and its associated environmental requirements, and consequently AR-5 is not consistent or compatible with the current natural gas regulatory framework. Ruby asserts that it began capital expenditures for the pipeline project in June 2007, and that, at the latest, Ruby should be allowed to begin accruing AFUDC as of January 28, 2008, the date on which Ruby initiated its pre-filing process. INGAA argues the Commission policy of allowing accrual of AFUDC only after the filing of a certificate application is at cross-purposes with the Commission's pre-filing program, which acknowledges that a pipeline project typically requires environmental, surveying, rights-of-way, engineering, regulatory, and long-lead supply procurement work prior to a formal certificate application.⁴³

41. Ruby was one of several pipelines that had been denied early accrual of AFUDC on expenditures made prior to the filing of the certificate application.⁴⁴ Like Ruby, the

⁴⁰ *Capitalization of Interest During Construction*, Accounting Release No. 5 (Revised), FERC Stats. & Regs. ¶ 40,005 (1968).

⁴¹ September 2009 Order at P 86.

⁴² *Id.* P 90.

⁴³ See 18 C.F.R. § 157.21(b) (2009).

⁴⁴ *Fayetteville Express Pipeline LLC*, 129 FERC ¶ 61,235 (2009); *Pacific Connector Gas Pipeline, LP*, 129 FERC ¶ 61,234 (2009); *Texas Eastern Transmission*,

other pipeline applicants argued that the Commission should allow the accrual of AFUDC on expenditures made prior to the filing of a certification application, particularly for those costs incurred during the pre-filing period. In response, on December 15, 2009, the Commission convened a technical conference seeking input and comments on the continuing propriety of the Commission's then-current policy of limiting the AFUDC accrual, absent specific justification, to expenditures incurred after the filing of an application.⁴⁵ The Commission received extensive comments from numerous natural gas pipelines through pre- and post-technical conference filings, and conference presentations and discussions.

42. Based on the comments received in the technical conference proceeding and in the requests for rehearing, the Commission revised its AFUDC policy as described in *Southern Natural Gas Co.* and *Florida Gas Transmission LLC*.⁴⁶ In these orders, we acknowledged that the natural gas industry has undergone significant changes since the issuance of AR-5 in 1968.⁴⁷ We also noted that since many natural gas pipelines take advantage of the pre-filing process and incur significant project-related costs during this time, they may be at risk of not being able to capture all of the cost of financing their construction projects if they cannot accrue AFUDC on expenditures made prior to the filing of a certificate application.⁴⁸ Therefore, in light of the current regulatory landscape in the natural gas industry, the certificate application date is no longer an appropriate

LP, 129 FERC ¶ 61,151 (2009); *Florida Gas Transmission Co. LLC*, 129 FERC ¶ 61,150 (2009); *Midcontinent Express Pipeline LLC*, 128 FERC ¶ 61,253 (2009); *Southern Natural Gas Co.*, 128 FERC ¶ 61,198 (2009).

⁴⁵ *Notice of Technical Conference on Commission Policy on Commencement of Accrual of Allowance for Funds Used During Construction*, 74 Fed. Reg. 65117 (December 2, 2009). Pre-technical conference comments were due December 11, 2009. Post-technical conference comments were due December 29, 2009.

⁴⁶ 130 FERC ¶ 61,193 (2010) and 130 FERC ¶ 61,194 (2010), respectively. A full discussion of the comments received in the technical conference proceeding and the Commission's rationale for adopting the new policy can be found in *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 at P 24-40.

⁴⁷ *See, e.g., Southern*, 130 FERC ¶ 61,193 at P 33.

⁴⁸ *Id.* P 33-34.

milestone for determining when construction project-related expenditures begin, and thus when to begin accruing AFUDC.⁴⁹

43. Under the Commission's revised AFUDC policy, natural gas pipelines may begin accruing AFUDC on construction projects when the following two conditions are met: (1) capital expenditures for the project have been incurred, and (2) activities that are necessary to get the construction project ready for its intended use are in progress.⁵⁰ The term "activities" includes all actions required to prepare the construction project for its intended use, including actions prior to physical construction, such as the development of plans or the process of obtaining permits from governmental authorities, and costs listed under Gas Plant Instruction No. 3.⁵¹ "Activities" does not include preliminary survey and investigation activities.⁵² Although the Commission's revised policy does not identify a bright line for establishing when natural gas pipelines may begin to accrue AFUDC, the date that the Commission approves the request to initiate the pre-filing process is a strong indicator of the initiation of construction project-related activities.⁵³

44. Based on our revised AFUDC policy, we grant Ruby's request for rehearing on this issue and will allow Ruby to include its proposed AFUDC in its initial rates, subject to Ruby's filing a representation that the proposed AFUDC accruals comply with the requirements set forth above and in our recent orders describing the revised AFUDC policy.⁵⁴ Furthermore, if Ruby determines that its proposed AFUDC accruals should be revised in light of our revised AFUDC policy conditions, it must revise all cost-of-service items dependant on Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. Ruby must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to its filing the tariff sheets to implement those rates.

⁴⁹ *Id.* P 34.

⁵⁰ *Id.* P 36.

⁵¹ *Id.*

⁵² *Id.* P 37.

⁵³ *Id.* P 39.

⁵⁴ *See Florida Gas*, 130 FERC ¶ 61,194 at P 24-29; *Southern*, 130 FERC ¶ 61,193 at P 36-40.

C. Environmental

45. On January 8, 2010, the Commission's staff issued a final EIS that evaluated the potential environmental impacts of the proposed Ruby project in order to satisfy the requirements of NEPA.⁵⁵ The U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, U.S. Natural Resources Conservation Service, State of Utah Public Lands Policy Coordination Office, and the Board of County Commissioners in Lincoln County, Wyoming all participated as cooperating agencies in the preparation of the EIS. The EIS addresses geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

46. Commission staff began its initial review of the project following its approval for Ruby to use the pre-filing process on January 31, 2008, in Docket No. PF08-9-000. As part of the pre-filing review, the Commission's staff issued a *Notice of Pre-Filing Environmental Review for the Ruby Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* on March 28, 2008. This notice was published in the *Federal Register* on April 7, 2008,⁵⁶ and sent to 6,976 interested parties, including federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; local libraries, newspapers, and television and radio stations; and other stakeholders who had indicated an interest in the project. The staff, in close cooperation with BLM, held six public scoping meetings in April 2008 to provide the public with an opportunity to learn more about the Ruby project and to comment on environmental issues that should be addressed in the draft EIS.⁵⁷

47. Ruby continued to develop its project and modify the pipeline route throughout the pre-filing period in an effort to resolve environmental issues. Subsequently, a second scoping period was opened after Ruby had better defined its preferred pipeline route and had filed more detailed environmental information. On September 26, 2008, the

⁵⁵ See 18 C.F.R. Part 380 for the Commission's National Environmental Policy Act of 1969 implementing regulations.

⁵⁶ 73 Fed. Reg. 18788 (2008).

⁵⁷ The initial public scoping meetings were held in Elko, Nevada; Kemmerer, Wyoming; Brigham City, Utah; Malin, Oregon; Lakeview, Oregon; and Winnemucca, Nevada during the evenings of April 15, 16, 17, 22, 23, and 24, 2008, respectively.

Commission's staff issued a *Notice of Intent to Prepare an Environmental Impact Statement and Land and Resource Management Plan Amendment for the Ruby Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) that described the revised project route; announced the time and location of four additional public scoping meetings;⁵⁸ and requested additional comments from the public. The NOI was sent to 7,292 parties and published in the *Federal Register* on October 2, 2008, announcing a closing date for the second scoping period of October 29, 2008.⁵⁹

48. In total, approximately 444 people attended the public scoping meetings, excluding representatives from Ruby, the Commission, and cooperating agencies. A total of 76 individuals provided oral comments on the project at the scoping meetings. In addition, 166 federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; and other interested stakeholders sent written scoping comments regarding the project.⁶⁰

49. The Commission's staff issued a draft EIS on June 19, 2009, that addressed the issues raised during the scoping period, with a 45-day public comment period.⁶¹ The draft EIS was mailed to the environmental mailing list that was expanded to include affected landowners who were added to the mailing list after issuance of the NOI and landowners potentially affected by some of the alternatives being considered. Seven public meetings were held to receive comments on the draft EIS in July 2009.⁶²

50. A total of 22 people provided comments at the meetings, and 126 stakeholders submitted a total of 139 letters in response to the draft EIS. The Commission's staff issued a final EIS on January 8, 2010. Public notice of the availability of the final EIS

⁵⁸ These public scoping meetings were held in Montpelier, Idaho; Hyrum, Utah; Brigham City, Utah; and Lakeview, Oregon during the evenings of October 14, 15, 16, and 22, 2008, respectively.

⁵⁹ 73 Fed. Reg. 57347 (2008).

⁶⁰ Table 1.3-2 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

⁶¹ 74 Fed. Reg. 30570 (June 26, 2009).

⁶² The draft EIS comment meetings were held in Malin, Lakeview, Winnemucca, Brigham City, Elko, Kemmerer, and Hyrum on the evenings of July 21, 22, 23, 27, 28, 29, and 30, 2009, respectively.

was published in the *Federal Register*.⁶³ The final EIS addresses timely comments received on the draft EIS.⁶⁴ The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS and landowners newly identified as affected by proposed route alternatives and variations.⁶⁵

51. The final EIS concluded that if the project were constructed and operated in accordance with applicable laws and regulations, the project would result in some adverse environmental impact. Most of these impacts would be reduced to less than significant levels with the implementation of Ruby's proposed mitigation and our staff's recommendations (as adopted in Appendix A of this order). However, even with mitigation, the EIS found that impacts on groundwater resources and sagebrush steppe habitat would be significant. In addition to these issues, other major issues of concern that were addressed in the final EIS are summarized below and include: geologic hazards; cryptobiotic soils; the Vya, Nevada temporary construction camp; cultural resources; migratory birds; federally-listed species; and route alternatives in northwestern Nevada.

1. **Major Environmental Issues Addressed in the Final EIS**

52. One issue that was raised in numerous comments is the potential adverse effect of the pipeline crossing areas of geologic hazards, such as seismicity, landslides, karst topography, and subsidence. The pipeline will cross 110 faults or fault zones and 32 areas where soils are susceptible to soil liquefaction. Approximately 16 percent of the pipeline route crosses areas of moderate-to-high landslide risk. Ruby has developed site-specific measures to reduce the risk associated with these geologic hazards, including the use of heavier-walled pipe, pipeline realignment to avoid specific faults, and post-seismic event field evaluation. Ruby has agreed to implement measures such as providing negative buoyancy for the pipe using concrete coating, set-on weights, or screw anchors, and alignment monitoring following the occurrence of significant earthquakes. Ruby also will employ measures to control runoff and erosion, thereby minimizing the potential for slope failures. Environmental Condition No. 17 requires Ruby to implement additional protective measures in karst terrain to minimize potential subsidence-related impacts along the right-of-way. The EIS concluded that Ruby's proposed measures and the condition will adequately minimize effects due to geologic hazards.

⁶³ A Notice of Availability for the final EIS was published by the U. S. Environmental Protection Agency. 75 Fed. Reg. 2540 (January 15, 2010).

⁶⁴ Appendix AA of the final EIS includes responses to comments on the draft EIS.

⁶⁵ The distribution list is provided in Appendix A of the final EIS.

53. Several commenters were concerned about the fragile nature of the soils in the project area. The EIS found that although most impacts on soils would be short-term, construction of the Ruby pipeline could cause long-term or permanent impacts on soils in areas that contain cryptobiotic soil crusts because it can take several years to several centuries for such locations to be restored after alteration. Three areas of cryptobiotic soil crusts were identified along the pipeline route, and Ruby proposes to reduce the construction right-of-way width in these areas. Ruby will also take steps to restore the crusts of the disturbed areas in the event that damage or destruction of the crusts can not be avoided, and Ruby will monitor the success of cryptobiotic crust restoration for five years following construction. Because restoration of these crusts can take decades or longer, the EIS concluded that this represents an irreversible or irretrievable project impact. Environmental Condition No. 18 requires Ruby to implement additional topsoil preservation and restoration measures in areas of known concentrations of cryptobiotic soil crusts to lessen impacts to the maximum extent practicable.

54. Water appropriation was also identified as an issue of concern given the low average rainfall in the project area and the large amount of water needed for hydrostatic testing of the pipeline⁶⁶ and dust control. Ruby will use about 402 million gallons of water from surface and groundwater sources for hydrostatic testing and dust control. Its water withdrawals and discharges will be conducted in accordance with all federal and state regulations and permit requirements. To minimize impacts on surface and groundwater sources, Ruby has committed to certain water appropriation timing restrictions, withdrawal rate limitations, intake screening requirements, biocide treatments and neutralization, discharge restrictions, and other measures. Nevertheless, the EIS concludes that the impacts on groundwater could be significant because of the volume of water proposed for use and the limited availability of groundwater in the region.

55. Sagebrush steppe habitat was identified as a sensitive resource of concern by many stakeholders because the Ruby project will result in the long-term disturbance of high-quality sagebrush habitat and have related impacts on sagebrush-obligate species such as the greater sage-grouse and pygmy rabbit, as well as on migratory birds. The EIS concludes that construction impacts on sagebrush steppe habitat will be significant due to

⁶⁶ Several commenters asked about the need to withdraw so much water for project-related purposes. Ruby is required to design, construct, test, and operate its pipeline in accordance with the U. S. Department of Transportation federal safety standards at 40 C.F.R. §§ 190-199 (2009), which include requirements for pipeline integrity testing. As discussed in EIS section 2.3.1.6, the only practical way for Ruby to meet testing standards is by hydrostatically testing the pipeline.

the amount of habitat affected and because restoration of the habitat could take 50 years or longer.

56. As described in the EIS, the greater sage-grouse is a sensitive small game species in the project area that was classified as a candidate for federal protection at the time of Commission staff's environmental review. However, on March 5, 2010, FWS determined that the greater sage-grouse did not warrant Endangered Species Act (ESA) protection. The pygmy rabbit is also a sensitive species in the project area that has been petitioned for listing under the ESA. Ruby has committed to measures to minimize impacts on greater sage-grouse and pygmy rabbit, including realignment of the pipeline, preconstruction surveys (for greater sage-grouse), construction buffers (for greater sage-grouse), construction timing restrictions, and specific revegetation activities. In addition, Ruby, BLM, FWS, Nevada Department of Wildlife, Wyoming Game and Fish Department, and Utah Department of Wildlife Resources have prepared a draft cooperative conservation agreement for the greater sage-grouse and pygmy rabbit. This agreement provides for funding by Ruby for state conservation efforts and incorporates by reference Ruby's separate *Greater Sage-grouse and Pygmy Rabbit Conservation Measures Plan* in order to minimize and mitigate adverse impacts associated with the project.⁶⁷ As stated in the EIS, Ruby has agreed to implement the agreement and has also committed to not remove sagebrush during routine vegetation maintenance activities after construction.

57. We received comments on the potential impacts Ruby's Vya temporary construction camp will have on socioeconomics, public services, and traffic. Ruby states that a construction camp is necessary because housing for project workers in western Nevada will be scarce. Ruby's Vya camp will provide temporary living quarters for up to 650 non-local pipeline workers on a privately-owned parcel in a relatively remote area in Washoe County, Nevada, near the California border.⁶⁸ The EIS evaluated the Vya temporary construction camp and addressed the potential for the camp to have socioeconomic, public service, and traffic impacts on the nearby communities, such as Cedarville and Alturas (California) and other communities in Surprise Valley (California) and Long Valley (Nevada). The EIS concluded that the Vya camp will not have a significant impact on these communities. As stated in the EIS, Ruby will coordinate the Vya camp construction and operations with the nearby townships. In addition,

⁶⁷ These agreements are included in EIS Appendix M (Biological Agreements, Plans, and Analysis).

⁶⁸ Ruby also is coordinating with the Town of Lakeview, Oregon, to establish a temporary lodging facility to accommodate up to 425 construction employees near that town.

Environmental Condition No. 43 requires Ruby to minimize the impacts associated with the Vya camp by amending its Traffic and Transportation Management Plan.

58. The project's potential impact on sensitive cultural resources was another major issue raised by commenters, especially certain tribes in the project area. Certain tribes consider much of the land crossed by the pipeline project to contain sensitive cultural resources and provide locations for tribal members to conduct traditional cultural practices. Section 4.10.1 of the EIS describes the cultural resource survey work done to date to assess and evaluate areas and sites of cultural significance. Although the final determinations of eligibility of effect that are required under the National Historic Preservation Act (NHPA) have not been completed, the EIS concluded that the Ruby project may potentially affect over 600 cultural resources sites, including sites and areas of traditional concern to various Native American tribes. In addition to the surveys required as part of the process for complying with the requirements of section 106 of the NHPA, Ruby sponsored ethnographic studies of several Native American tribes who claim traditional territory along the pipeline route. Ruby has submitted preliminary summaries or full reports of findings for these studies. Remaining work, including completion of ethnographic studies and surveys of numerous ancillary areas, is expected to be completed in 2010.

59. Environmental Condition No. 44 requires Ruby to prepare treatment plans to address any historic properties that could be adversely affected by the project once all studies and the appropriate consultations are completed. These treatment plans are subject to review and approval by the appropriate agencies. Our staff and BLM initiated consultation with Native American tribes early in the pre-filing process by sending notices and consultation letters to tribes and conducting meetings and field visits to elicit concerns and identify sensitive resources. The tribes also received the draft and final EIS, and copies of survey reports, upon request. To ensure that our responsibilities under section 106 of the NHPA⁶⁹ are met, Environmental Condition No. 44 also requires Ruby to complete the appropriate studies and reports so that staff can complete the necessary consultations before treatment or construction is authorized.

60. A variety of migratory bird species, including both songbirds and raptors, are associated with the habitats identified along the project. Construction could cause direct and indirect impacts on raptors and other migratory birds. Ruby has agreed to comply with seasonal timing restrictions and spatial buffer zones for nesting raptors established by resource agencies. Further, as described in section 4.5.5 and Appendix M of the EIS, Ruby has prepared a draft conservation agreement with the FWS for the protection of migratory birds during construction. As stated in the EIS, the final agreement will outline

⁶⁹ See 16 U.S.C. § 470f (2006).

the procedures to avoid or minimize direct impacts on certain migratory birds, including passerine species, as well as define Ruby's commitments to fund mitigation actions for migratory bird habitats that are impacted.

61. The EIS found that 11 federally listed species (black-footed ferret, Ute ladies'-tresses, and nine fish species) may be affected by construction and operation of the project. In compliance with the ESA, our staff prepared and submitted to the FWS a biological assessment initiating formal and informal consultation under section 7 of the ESA.⁷⁰ Staff concluded in the biological assessment that the project is likely to adversely affect the nine fish species but is not likely to adversely affect the black-footed ferret and Ute ladies'-tresses. The FWS is preparing a biological opinion to determine whether it concurs with staff's determinations. Environmental Condition Nos. 35 and 36 ensure that no construction occurs in areas where species concerns are present until the appropriate section 7 consultation is completed.

62. Section 3 of the EIS evaluated a range of alternatives for the Ruby project, including the no action or postponed action alternative, system alternatives, route alternatives, route variations, and aboveground facility site alternatives. The draft EIS evaluated and recommended three route alternatives and 15 minor route variations that meet the project objectives, are technically and economically feasible, and will confer an environmental advantage over the proposed route. Ruby subsequently modified its proposal to incorporate the recommended route alternatives and variations into its proposed action. Thus, the proposed action analyzed in the final EIS includes these 18 alternatives and/or variations.

63. Based on comments received on the draft EIS, section 3.4.3 of the final EIS added an evaluation of an Interstate Corridor Route Alternative to consider a route that would follow existing highways entirely. This alternative would be 122 miles longer than the proposed route, would require one additional compressor station, and would have a greater effect on many resources compared to the proposed route. Thus, the EIS concluded that this alternative would not confer a significant advantage and did not recommend it.

64. We received several scoping and EIS comments stating that the Ruby pipeline should be routed to make use of the West-Wide Energy Corridor (WWEC). Accordingly, section 3.4.9 of the EIS evaluated an alternative that would maximize use of WWEC segments, and concluded that the non-contiguous nature of the WWEC makes utilizing the corridor for long projects across multiple federal parcels problematic and ineffective. The EIS further concluded that the WWEC Route Alternative would not confer a

⁷⁰ See 16 U.S.C. § 1536 (2006).

significant environmental advantage over the proposed route and that incorporation of the WWEC route would result in substantial increased costs that would make the project economically infeasible.

65. Several major route alternatives through northwestern Nevada were evaluated in the EIS in an effort to minimize impacts on sagebrush steppe habitat, culturally sensitive areas, and other environmental resources. Sections 3.4.12, 3.4.13, and 3.4.14 of the EIS discuss three major alternatives (the Sheldon, Black Rock, and Jungo-Tuscarora route alternatives) that were identified by resource agencies to reduce the project's impacts on high-quality greater sage-grouse habitat and to address sensitive cultural resource concerns in northern Nevada. The final EIS concluded that the added length of the Black Rock and Jungo-Tuscarora Route Alternatives (about 42 miles and 52 miles, respectively) would result in greater overall impact and would not offer an environmental advantage over the proposed route.

66. The EIS found that the Sheldon Route Alternative might result in less environmental impacts on some resources as compared to the proposed route, including reduced impact on greater sage-grouse and some of the resources of concern to the Summit Lake Paiute Tribe. However, the alternative crosses the Sheldon National Wildlife Refuge, Gooch Table Wilderness Study Area, and three citizen-proposed Wilderness Study Areas. The FWS has made a preliminary determination that the Sheldon Route Alternative is not compatible with the purposes of the refuge and stated it would not concur with a right-of-way grant for this alternate route. The EIS did not recommend the Sheldon Route Alternative.

2. Late Comments Not Addressed in the Final EIS

67. A number of general comments on the project that were not specific to the draft EIS were received too late for inclusion in the final EIS. However, most of the resource issues raised by these commenters are already addressed in the EIS. These comments were submitted by the Western Watersheds, on January 4 and March 7, 2010; White Pine Ranch, on January 8, 2010;⁷¹ the Klamath Tribes of Oregon, on January 20, 2010; and the mayor of Brigham City, Utah and the City Planning Commission (Brigham City).⁷²

⁷¹ Both Western Watersheds and White Pine Ranch had already filed timely comments on the draft EIS, which were addressed in the final EIS. Western Watersheds' subsequent filings contained supplemental comments on the draft EIS as well as comments on the overall Commission process, the cooperating agency process, and on filings submitted by Ruby. The March 7 filing was specifically in response to Ruby's filings of February 19 and 29, 2010. White Pine Ranch filed a supplement to its earlier comments regarding the Vya construction camp.

(continued...)

68. Many of Western Watersheds' comments targeted resource issues that are evaluated in detail in the final EIS (e.g., potential impacts on greater sage-grouse, pygmy rabbit, and sagebrush vegetation; weed infestation; visual impacts of the right-of-way; use of access roads; alternatives; and discussion of environmental baseline information). Other comments pertained to the accuracy and veracity of filings submitted by Ruby. To take one example, Western Watersheds asserts that Ruby has undercounted the number of sage-grouse leks (not just those counted during the previous surveys). Thus, if additional leks are discovered during the required preconstruction surveys for greater sage-grouse, Ruby will implement its conservation measures, which include construction buffers and timing restrictions.⁷³ Ruby's filings were made under oath and supported by surveys, reports, and statements made by people versed in the issue at hand. Further, in the EIS our staff conducted an independent evaluation of the project and its impacts and made additional recommendations where necessary.

69. Western Watersheds expresses concern that the pipeline project crosses a "Globally Significant" area in northwestern Nevada. Western Watersheds contends that any non-located pipeline crossing the area would cause irreparable, globally significant environmental destruction. The final EIS does acknowledge adverse impacts, but concludes that most impacts would be reduced to less than significant levels. Significant impacts remain (on sagebrush habitat and groundwater), but as detailed in the EIS, Ruby's proposed mitigation and our staff's recommended measures (as adopted in Appendix A of this order) reduce these impacts to an acceptable level.

70. Western Watersheds notes that Ruby has filed supplemental information at various times and suggests that the public (as well as the Commission) will be too confused by these updates to fully understand the project's environmental impacts.⁷⁴ We disagree.

⁷² The Brigham City comments consist of a January 10, 2010 e-mail to Commission staff (which was entered into the record) and a January 14, 2010 letter addressed to Ruby and forwarded to the Commission for inclusion in the record.

⁷³ Western Watersheds also takes issue with the fact that different states have different requirements with regard to lek avoidance buffers and other resource conservation measures. We have no authority over how states' resource agencies approach resource protection. Ruby's proposal takes into account the states' various requirements, and we find that acceptable.

⁷⁴ Western Watersheds also takes issue with a recent Ruby filing which included photos of a particular stretch of the route collocated with a powerline and suggests that our staff will be misled into believing the entire route is collocated or crosses previously

(continued...)

Many of Ruby's filings were direct responses to our staff's data requests and previously identified data gaps. Throughout the environmental review process, applicants are encouraged to submit environmental information that helps fill in data gaps, solidify commitments, and update the Commission's staff on progress with resource agencies. Our staff was able to evaluate the information filed by Ruby and incorporate it into the EIS.

71. Western Watersheds also contends that Ruby will be able to pick and choose how it implements its conservation and mitigation measures, and that the Commission does not have the authority or willingness to enforce measures that become a part of the authorized project. In fact, the Commission has a compliance inspection program in which Commission staff (or a designated contractor) conducts periodic inspections of project construction as well as right-of-way revegetation and restoration. Such inspections begin with the start of construction and continue until the right-of-way is determined to be effectively restored, a period which often lasts several years or longer for a major project. In addition, Ruby has agreed to use the Commission's third-party monitoring program, which allows environmental monitors to be in the field for the duration of construction and initial restoration. These monitors report directly to the Commission and provide an additional level of compliance oversight. The inspection and monitoring programs ensure that the environmental conditions in Ruby's certificate are met. The Ruby project will not be authorized to be placed into service until Commission staff is satisfied that the applicable project conditions have been satisfied and that the right-of-way restoration is proceeding satisfactorily.

72. White Pine Ranch filed comments to supplement its earlier comments regarding the proposed location and use of the Vya construction camp. These comments suggested either an alternate site for the camp in Lakeview, Oregon, or a realignment of the camp access road that crosses the ranch property adjacent to the Vya parcel. The final EIS evaluated the potential environmental impacts of the Vya camp site and concluded that it is environmentally acceptable. The site landowner has filed comments in support of the use of his land for the purpose stated, and Ruby indicates that Washoe County has issued a Special Use Permit to Ruby for the site. Further, Ruby is already proposing another temporary worker housing facility in Lakeview. In the event White Pine Ranch and Ruby agree on a change in the approved location of the road to access the Vya construction camp, Environmental Condition No. 5 provides a mechanism for staff to

disturbed habitat. This is simply not true. A major focus of the EIS is on the acknowledged habitat and resource sensitivity of much of the proposed route. Our staff has seen the route first-hand and is under no misconceptions as to its nature.

review and approve route realignments, new access roads, and other areas that may be used or disturbed and have not been previously identified.

73. The letter from the Klamath Tribes reiterated the tribes' previously stated concerns regarding the Ruby project and its potential impact on sacred areas and burials. The letter included a 1992 tribal resolution opposing excavation of the tribes' cultural and sacred sites. The Klamath Tribes expressed concern that the spirituality and sacredness of the sites had not been taken into consideration during identification of sites, and indicated that it could not support the project due to the detrimental effects the project would have on several of the tribes' sacred areas/religious districts. As described in section 3.4.15 of the EIS, Ruby adopted the Southern Langell Valley Route Alternative to minimize impacts on cultural resources and areas identified as sensitive to the Klamath Tribes. In addition, to assist in addressing these issues, Ruby undertook an ethnographic study with the Klamath Tribes to identify culturally-sensitive areas and areas of concern, which will be considered during the NHPA section 106 process along with other survey results and studies. Klamath tribal members participated in the cultural resources surveys to assist in the identification of resources. Ruby has worked and continues to work with the Klamath Tribes to refine the route in order to avoid as many sensitive features as feasible. Further discussion of the project's potential effect on cultural resource sites and other areas of concern to various Native American tribes is included in EIS sections 4.10.1.4 and 4.10.3.

74. Pipeline safety is the main concern expressed in the Brigham City comments. Brigham City referenced several previous pipeline explosions and questioned the safety of the Ruby pipeline route down a steep slope as it would approach the city. Brigham City indicates that there are residences within several hundred feet of the pipeline route and that the area is known for geologic fault activity. Other concerns were side/steep slope construction and slope stability (severe erosion and possible landslides), and the placement of safety valves. Brigham City also refers to a large fine levied against El Paso Corporation (which holds a majority interest in Ruby) by the U.S. Department of Transportation for violating federal safety rules.

75. We consider pipeline safety to be an important and serious matter. Any Commission-regulated pipeline must meet the current pipeline safety standards as set forth in the U.S. Department of Transportation regulations at 49 C.F.R. §§ 190-199 (2009). As discussed in section 4.12 of the EIS, the Ruby pipeline will be required to comply with the applicable safety standards, including those relating to classifications based on population density, High Consequence Areas, pipeline integrity management, emergency response, and valve placement location. Table 4.12.1-1 of the EIS specifies that Ruby is required to comply with higher safety pipeline design requirements in the area around Brigham City between mileposts 100 and 107. The EIS also discusses pipeline accident data and the project's impact on public safety.

76. The geologic and seismic conditions near Brigham City were also addressed in the final EIS. As indicated in EIS section 4.1.3.1, Ruby provided a fault hazard analysis for each of the 31 faults that either cross or occur within 300 feet of the pipeline right-of-way, including the Wasatch Fault near Brigham City. Based on the specific factors at the Wasatch Fault crossing location, Ruby has realigned its pipeline and relocated one mainline valve between mileposts 108 and 109. The EIS concluded that seismic hazards will not pose a significant risk to the pipeline.

77. Steep slope construction is discussed in sections 2.3.2.5 and 4.1.3.2 of the EIS. The EIS notes the steep terrain and high landslide susceptibility near Brigham City, and acknowledges the challenges to construction in such areas. However, constructing down and across steep slopes is a common pipeline construction practice. As discussed in the EIS, Ruby will use additional cutting, grading, and workspace to establish a safe and stable work area. Sediment barriers and other erosion control devices will also be used to minimize downslope spoil movement.

78. Brigham City's comments also expressed concern for the project's potential impacts on groundwater (wells and springs) and wetlands. Section 4.3.1.3 of the EIS discusses a wellhead protection area that will be crossed in the Brigham City area between mileposts 100 and 107. Environmental Condition Nos. 21 through 24 require Ruby to conduct well and spring construction planning, monitoring, and testing, as well as to implement setbacks for refueling and certain other activities to protect groundwater resources. Section 4.3.3.1 and Appendix R of the EIS disclose and discuss wetland impacts, including the wetland in Flat Bottom Canyon referenced in the Brigham City comments. The EIS concluded that Ruby's wetland construction methods, mitigation procedures, restoration design, and post-construction monitoring will minimize wetland impacts.

79. Another concern raised by Brigham City relates to the timing of Ruby's construction overlapping with ongoing construction of Rocky Mountain Power's Energy Gateway Project in the same area. The Ruby project will parallel about 2.8 miles of the Energy Gateway Project right-of-way. Specifically, Brigham City is concerned that the Ruby project will disturb ground already destabilized by the Energy Gateway Project and result in erosion and sediment runoff into a downslope residential area. Section 4.13 of the EIS discusses cumulative impacts of the Ruby project, including those related to the Energy Gateway Project. Section 4.13.2 acknowledges that cumulative erosion impacts could occur where construction disturbance areas overlap or are near each other; however, the specific construction timeframe for this portion of the Energy Gateway Project is unknown. The EIS concluded that Ruby's erosion control techniques and restoration measures will minimize erosion and enhance revegetation along its pipeline right-of-way. While construction of the Ruby project may increase the time needed to achieve site restoration and final stabilization where these two projects overlap, Environmental Condition No. 8 requires that environmental inspectors identify and report

erosion and restoration problems should they occur, and report the corrective action and mitigation implemented by Ruby to resolve any such problems.

3. Comments on the Final EIS

80. We received comments on the final EIS from the U.S. Department of the Interior (DOI); the Wyoming Game and Fish Department;⁷⁵ the State of Oregon (compiled comments from several agencies); Tribal Chairman Warner Barlese of the Summit Lake Paiute Tribe; the Fort McDermitt Paiute-Shoshone Tribe; the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation; the Susanville Indian Rancheria; Mr. Dean Barlese; the Fort Bidwell Indian Community Council; the Council of Energy Resource Tribes (CERT);⁷⁶ Wendi and Ed Lutz; Ms. Linea Sundstrom; the National Trust for Historic Preservation; Mr. Billo Comola; the Sierra Club (Toiyabe Chapter); Mr. Randy Largent; and Newmont Mining Corporation. Many of the issues raised by these commenters were addressed in the final EIS, both in the textual analysis and in Appendix AA (Comments on the Draft EIS and Responses). We find no cause to respond in detail to post-EIS comments that revisit matters previously raised and fully addressed in the final EIS. Those comments that raise new issues or provide new information are addressed below.

Comments Related to the Sheldon Route Alternative

81. The DOI commented that the final EIS implies that the Sheldon Route Alternative could be authorized within the Sheldon National Wildlife Refuge through simple administrative actions when, in fact, a pipeline through a wildlife refuge would require FWS to first find that such a pipeline is consistent with the purposes of the wildlife refuge and the wildlife refuge system. The DOI further commented that the final EIS's conclusion regarding the Sheldon Route Alternative is misleading, incomplete, unverified, and improperly analyzed.

82. A significant amount of environmental research and analysis was conducted in preparing the EIS. The final EIS summarizes the results of this research and analysis in plain language and, where appropriate, discloses opposing conclusions of cooperating

⁷⁵ The Wyoming Game and Fish Department stated that the final EIS addressed its previous comments and that it had no additional concerns.

⁷⁶ CERT, in a letter addressed to the U.S. Army Corps of Engineers and placed into this proceeding's eLibrary record at the Commission, expressed its support for the Ruby project due to the projected economic benefits and employee opportunities for the CERT member tribes, as well as for U.S. energy needs.

agencies. As cooperating agencies in preparing the EIS, BLM and FWS reviewed and commented on a preliminary version of the final EIS and provided text and analysis that could be incorporated directly into the EIS. Section 3.4.12 of the EIS explicitly acknowledges the mission of the FWS Refuge System and potential compatibility concerns if the Sheldon Route Alternative were adopted. The EIS concluded that the Sheldon Route Alternative *might* have less environmental impact when compared to the corresponding segment of the proposed route, but the EIS states that FWS disagrees with this conclusion and that there may be additional impacts that would become known if additional site-specific surveys were conducted. The EIS further states that if the Sheldon Route Alternative were authorized by the Commission, the FWS would require additional analyses, and there would be delays associated with satisfying regulatory requirements.

83. While DOI opposes the Sheldon Route Alternative, several stakeholders continue to support it. Mr. Billo Comola commented that the Sheldon Route Alternative appears to be the most preferable route as it is collocated along an existing highway corridor. Likewise, Mr. Dean Barlese, a member of the Pyramid Lake Paiute Tribe, commented that he preferred the Sheldon Route Alternative, as it would have less impact on sacred sites and traditional gathering areas for food, medicines, and botanicals as compared to the proposed route. Tribal Chairman Stacy Dixon of the Susanville Indian Rancheria commented that his tribe prefers the Sheldon Route Alternative.

84. Tribal Chairman Warner Barlese of the Summit Lake Paiute Tribe contends that the Sheldon Route Alternative should have been preferred over the proposed route and that the FWS does not have the authority to veto the Sheldon Route Alternative. Tribal Chairman Barlese contends that a more thorough review of the Sheldon route would show it to be comparatively less invasive than the proposed route with regard to tribal concerns. However, no new information is provided in Tribal Chairman Barlese's letter.⁷⁷

85. EIS section 3.4.12 thoroughly reviewed the Sheldon Route Alternative. As noted therein, the route is not without impacts of its own and would require additional routing changes in southern Oregon. Moreover, as noted in the EIS, the FWS has not found that

⁷⁷ Tribal Chairman Barlese's letter also expressed opposition to the overall Ruby project and specifically to the proposed route through undisturbed and remote traditional territory just north of the tribe's reservation. Included with the letter were seven tribal resolutions opposing the Ruby project. Another issue raised by Tribal Chairman Barlese pertains to the BLM policy of artifact collection on public lands. Commission staff has forwarded this letter to the BLM so that it may have the opportunity to address comments about artifact collections.

route to be consistent with the purposes of the Sheldon Wildlife Refuge. Without such a finding, the Sheldon Route Alternative cannot be constructed.⁷⁸ Further, as noted in the EIS, the FWS has advised that the process of making such a determination is likely to be a lengthy one. As discussed in the EIS and this order, we find that authorization of the Ruby pipeline project, without the Sheldon Route Alternative, is an environmentally acceptable action. Therefore we find, on balance, that the public convenience and necessity does not require our adoption of that alternative.

Comments Related to Cultural Resources and Tribal Issues

86. The Oregon State Historic Preservation Office (Oregon SHPO) pointed out the need for more work on a Traditional Cultural Properties study, but acknowledges that these issues will continue to be resolved during the NHPA section 106 process. The Oregon SHPO also encouraged the continuation of consultation with the Klamath Tribes. Environmental Condition No. 44 requires that the appropriate studies, reports, and consultations be completed before construction is authorized. The Oregon SHPO also commented that the final EIS suggests that determinations of eligibility for the National Register of Historic Places have been made for some archaeological sites. We have confirmed this is not the case. Prior to construction, staff will complete consultation with the Oregon SHPO and other state historic preservation offices regarding determinations of eligibility and effect, as required under section 106 of the NHPA.

87. Wendi and Ed Lutz commented that they believed the Nevada SHPO was not consulted early in the NEPA process. In fact, our staff initiated its consultation with the Nevada SHPO in April 2008, requesting participation in agency scoping meetings for the Ruby project, and our staff has had numerous contacts with the Nevada SHPO regarding the project since that time. The Nevada SHPO has been sent all notices, the draft EIS, and the final EIS. Additionally, Ruby acted as the Commission's informal representative assisting staff in the NHPA section 106 process and has consulted with the Nevada SHPO throughout the project timeframe.

88. Linea Sundstrom, on behalf of the Conservation Committee of the American Rock Art Research Association, commented that the EIS does not adequately address cultural resources impacts and fails to meet the requirements of cultural resource laws and regulations, including section 106 of the NHPA. Ms. Sundstrom's primary concern is the rock art (petroglyph) sites. Section 4.10.1 of the EIS notes rock art sites that have been identified to date. Environmental Condition No. 44 ensures that Ruby will comply with the NHPA and protect cultural resources such as petroglyphs.

⁷⁸ See 16 U.S.C. § 668dd(d) (2006).

89. The National Trust for Historic Preservation (Trust) filed a copy of a letter to the BLM commenting that the Commission's approach to NHPA compliance was deficient, flawed, and violated the NHPA regarding timing requirements and the ability to examine alternatives. The Trust also commented that the EIS was deficient in the information provided regarding cultural resources and potential effects on historic properties. Further, the Trust urged BLM to deny a right-of-way grant for the Ruby project until the requirements of the NHPA were met. We disagree with these assertions. Section 4.10 of the EIS sufficiently discusses cultural resources and effects. We have conducted our consultations in accordance with both the Advisory Council on Historic Preservation's regulations, and the Commission policies, practice, guidelines, procedures, and regulations. Sections 3.0 and 4.10 of the EIS discuss major and minor alternatives that have been explored and that continue to be explored to avoid historic properties. Further, Environmental Condition No. 44 ensures completion of the NHPA process prior to construction of the project.

90. Several tribes and tribal members commented on the tribal consultation process and the proper implementation of section 106 of the NHPA. For example, both the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation and Tribal Chairman Stacy Dixon of the Susanville Indian Rancheria expressed their continued disappointment with the government-to-government consultation process and that the analysis in the EIS was provided without first consulting the tribes. Numerous laws, policies, federal memoranda, and executive orders were referenced by the Shoshone-Paiute Tribes that identify tribal rights and outline requirements for tribal consultations. Mr. Dean Barlese, a Pyramid Lake Paiute tribal member, requested face-to-face consultation with the Commission. As discussed in section 4.10.3 of the EIS, tribal consultation led by our staff and augmented by BLM and other land-management agencies has been conducted throughout the project review. In addition, as noted in section 4.10.1 and 4.10.3 of the EIS, ethnographic studies are continuing. The tribes have been invited to participate in all outreach and consultation efforts.

91. Mr. Dixon also commented that his tribe is concerned about human remains. He recommended that Native American monitors should be hired to be present during the pedestrian surveys and construction phases of the project, and encouraged tribal input regarding mitigation. As described in EIS sections 4.9.7 and 4.10.3, Ruby has initiated a tribal monitor training program. Section 4.10.3 of the EIS also summarized the tribal consultation process and discussed mitigation and other issues related to traditional resources.

92. Chairman Aaron Townsend of the Fort Bidwell Indian Community Council commented that it is his understanding that cultural resources reports and ethnographic studies must be complete before agency decisions can be made for the Ruby project. This is not correct. Environmental Condition No. 44 states that no construction will be authorized until all appropriate studies are complete. Mr. Townsend also commented that

the alternatives analysis in the EIS is lacking and further requests a more thorough explanation of Executive Order 12898. A thorough discussion of alternatives, including the reasons for dismissing any given alternative, is presented in section 3.0 of the final EIS. Executive Order 12898 which addresses Native American tribes and specifically the Fort Bidwell Indian Community, is discussed in section 4.9.7 of the EIS. Mr. Townsend also requested that the tribes be given more time to review the final EIS. There is no formal review or comment period for a final EIS, thus this request is denied. Tribal Chairman Billy Bell of the Fort McDermitt Paiute-Shoshone Tribe stated that the EIS did not provide enough information for his tribe to recommend approval or rejection of the project. He requested copies of the cultural resources survey reports for Nevada. While the Fort McDermitt Paiute-Shoshone Tribe was provided the survey report for Nevada in 2009, the BLM has informed our staff that it has forwarded Tribal Chairman Bell's request to Ruby. Ruby's compliance with Environmental Condition No. 44 will ensure that it provides copies of additional survey reports to the Tribe.

Comments Related to Geologic Hazards and Mineral Resources

93. The Oregon Department of Geology and Mineral Industries (ODGAMI) expressed concern that Ruby may not have consulted the best currently-available geologic map of Oregon in developing its geologic and seismic information restrictions.⁷⁹ ODGAMI was concerned that the number of fault crossings Ruby identified in Oregon was inaccurate and that the pipeline route would cross several historic earthquake epicenters. ODGAMI suggested that Ruby undertake a number of tasks, including identifying Quaternary Faults in Oregon, performing additional analyses of hazards, risks, and related impact on the public, and developing a geotechnical mitigation design. ODGAMI stated that the detailed seismic hazard analysis should contain design provisions for liquefaction and lateral spreading impacts because the pipeline route is located very close to several areas identified as having moderate liquefaction potential in Oregon and that site-specific investigations should be conducted where landslide hazards have been identified.

94. In its September 14, 2009 data response, Ruby provided the references and methodology used by MACTEC, Ruby's geotechnical consultant, to identify seismic and

⁷⁹ ODGAMI recommended that Ruby conduct a comprehensive literature review to include the following references: *Oregon Geologic Data Compilation* (OGDC-5 by Ma, et al. 2009); USGS OFR-03-095; *Guidelines for Preparing Engineering and Seismic Reports* (ODGAMI OFR O-00-04); *Guideline for Assessing the Performance of Oil and Natural Gas Pipeline Systems in Natural Hazard and Human Threat Events* (Federal Emergency Management Agency and National Institute of Building Sciences, April 30, 2004); *Seismic Hazards of Klamath County* (ODGAMI IMS-20); and *Landslide and Land Subsidence Hazards to Pipelines* (USGS OFR 2008-1164).

geologic hazards and to develop its geotechnical reports. Ruby also filed three geotechnical reports and additional supporting information on September 22, 2009. These reports and data were not included as appendices in the final EIS because they are voluminous, but they are available on the Commission's website under the project docket number. These reports provide the project information that ODGAMI requested. The EIS also states that state-licensed professionals reviewed Ruby's data and conducted the analysis of seismic and geologic hazards, as was requested by ODGAMI. To ensure that Ruby addresses the remaining concerns raised by ODGAMI, Environmental Condition No. 46 requires Ruby to provide copies of the geotechnical reports to ODGAMI for its review and comment; to file any written comments received on the reports along with a discussion of how Ruby will address any ODGAMI comments; and to file any revisions and updates to the reports based on its consultations with ODGAMI.

95. Randy Largent from Newmont Mining Corporation (Newmont Mining) commented that the location of a route variation that was incorporated into the project design could cause a problem with the geologic or engineering plans for the mine. Newmont Mining also copied the Commission on a letter submitted to the BLM that repeats Newmont Mining's concerns, but additionally stated that although Ruby apparently agreed (as presented in the EIS) to discuss any route variations with Newmont Mining, Ruby did not do so.

96. On March 1, 2010, Ruby filed a response to Mr. Largent's and Newmont Mining's concerns stating that it was unaware of Newmont Mining's unpatented mining claim interest. Ruby reports that in response to these concerns, it met with Mr. Largent, other Newmont Mining representatives, and BLM (the location in question is on BLM land). Ruby, Newmont Mining, and BLM agreed to a series of steps that will determine the respective rights of the parties, the potential for further mineral exploration or mining, and potential avoidance measures. Another meeting is planned to continue to resolve issues. As noted previously, Environmental Condition No. 5 provides a mechanism for Ruby to propose minor route adjustments to address site-specific concerns such as those of Newmont Mining.

97. Newmont Mining also claims that the EIS fails to accurately analyze mineral prospects, mining claims, and exploration areas that would be crossed by the proposed and alternative pipeline routes. Table 4.1.2-1 of the EIS lists known mineral resources within 1,500 feet of Ruby's construction workspace. Although the Newmont Mining active exploration is not listed in this table, the EIS text discloses that there is an area of active mining interest held by Newmont Mining in proximity to the pipeline route. The EIS also states that there are additional locations of "mining prospects" and open mining claims along the pipeline route. Some of the Newmont Mining locations appear to be areas of interest for current and future exploration. The EIS does not presume to be an exhaustive list of all such areas, but represents the information available at the time of publication. The EIS states that Ruby is required to negotiate damages, access rights, and

easements with mining claim owners, where appropriate. This will apply to any Newmont Mining claims crossed by the project.

98. Newmont Mining further commented that the proposed project would impact existing roadways that are utilized and maintained by Newmont Mining in Elko and Humboldt Counties, Nevada. Mr. Largent states that Ruby's commitment to repair roads "as needed" is not enforceable and requests that federal authorizations require Ruby to repair roads damaged during construction. As stated in section 4.9.4 of the EIS, Ruby will inspect roads periodically during the construction period and will repair the roads as needed. Following construction, Ruby has committed to repair public roads as close as practicable to their original condition, while private roads will be returned to their original condition or better unless otherwise requested by the landowner or land managing agency. In addition, Ruby would be subject to the requirements of any state or local road-use permits.

Other Comments

99. The Toiyabe Chapter of the Sierra Club (Sierra Club) expressed disappointment that the public is restricted to a short comment period on the draft EIS and that Ruby is allowed to submit supplemental filings throughout the Commission review process, thus creating an unmanageable scattershot of information too unwieldy for public review. We disagree and we have addressed this concern in our response to Western Watersheds' comments above. The Sierra Club also disagrees with the provisional language contained in the EIS (e.g., that an applicant "would" do something or that a practice would be employed "to the greatest extent practicable."). An EIS is not a decision-making document; thus, the language therein typically reflects the conditional nature of a project that has not yet been approved. With this order, the proposal and agreements as authorized become subject to the Commission's compliance enforcement.

100. Most of the Sierra Club's remaining comments addressed the three conservation agreements Ruby has executed with various agencies regarding sensitive resources.⁸⁰ For example, the Sierra Club commented that Ruby's pledged mitigation in the various plans violates the Nevada Sage-Grouse Conservation Strategy. The Sierra Club also expressed

⁸⁰ Draft versions of the following agreements are presented in Appendix M of the EIS: *Voluntary Conservation Measures in Furtherance of the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act and Executive Order No. 13186*; the *Memorandum of Agreement Between Ruby Pipeline LLC and U.S. Fish and Wildlife Service Regarding Endangered Species Act Conservation Action Plan for the Ruby Pipeline Project*; and the *Ruby Project Cooperative Conservation Agreement for the Greater Sage-Grouse and Pygmy Rabbit*.

concern that language in the three agreements is so vague and weak that Ruby may not be under any enforceable obligation to perform the commitments it proposes to make in the documents. To the contrary, federal and state agencies that are participating parties to the Nevada Sage-Grouse Conservation Strategy have all worked collaboratively with Ruby to develop the draft conservation agreement for sage-grouse. Ruby's conservation agreements are voluntary insofar as Ruby has proposed to enter into and develop the agreements on its own, as opposed to being required to do so. Our staff has encouraged Ruby to reach such agreements with the relevant agencies to mitigate impacts on sensitive resources and we believe these agreements, when finalized, help accomplish that goal. Further, now that Ruby has filed its commitment to adhere to these agreements, they have become a part of the authorized project. Once executed, the measures in the agreements will be binding on Ruby and enforceable by the Commission.

101. The Oregon Department of Fish and Wildlife (ODFW) commented that many of its previously stated issues are addressed in the final EIS and it agrees with many of our staff's recommendations. However, the ODFW pointed out that the Malone Reservoir should have been included in the EIS list of waterbodies that will be crossed. Although the EIS did not specifically name the Malone Reservoir, it did include the reservoir in its evaluation of effects. The Malone Reservoir is a 20-acre impoundment on the Lost River that is used to divert water to serve lands in Langell Valley. The list of anticipated waterbody crossings in the EIS identifies the crossing of the Malone Reservoir as the Lost River at milepost R665.2. Environmental Condition No. 35 requires Ruby to file a revised site-specific plan for crossing several waterbodies, including the Lost River.

102. The ODFW stated that in a January 7, 2010 meeting, Ruby representatives agreed not to use Oregon surface waters for hydrostatic testing or dust abatement, and that this commitment conflicts with information presented in the EIS. Specifically, section 4.3.2.5 of the EIS identifies two Oregon surface water sources, Dry Creek and the Willow Valley Reservoir, for use as dust abatement water withdrawals (approximately 1,680,000 gallons). The January 7, 2010 meeting occurred at approximately the same time that the final EIS was issued. Therefore, any discussions or commitments made by Ruby during that meeting were not included in the final EIS. The EIS does state that Ruby will not appropriate waters from any source unless it receives approval from the state water engineer's office and water rights holders. The ODFW commented that it prefers the use of groundwater for hydrostatic testing and dust abatement. Should Ruby need to use groundwater sources in lieu of surface waters in Oregon, Ruby will be required to use a source that is deemed acceptable and permitted by the state engineering office. In a March 19, 2010 filing, Ruby stated that it no longer intends to withdraw water from either the Willow Valley Reservoir or Dry Creek. Instead, Ruby proposes to withdraw water for dust abatement periodically from an irrigation canal adjacent to Dry Creek in conjunction with releases from Renner Reservoir. Ruby states that this is the only surface water source proposed by Ruby in Oregon and it has received final authorization from the State of Oregon Water Resource Department for this use.

103. The ODFW requested that we impose a summer construction timing restriction to minimize impacts on a colonial wading bird rookery near Garrett Marsh. The ODFW contends that the sensitivity of nesting birds at this location makes them susceptible to noise harassment. As stated in EIS section 3.5.16, a route alternative was adopted by Ruby to avoid direct impacts on Garrett Marsh and to minimize noise impacts on nesting birds. This route was supported by the ODFW and Ducks Unlimited. The main reason for the alternative was to avoid impacts by creating a spatial buffer, thus obviating the need for temporal restrictions. Although the proposed route now is at least 1,200 feet from the main rookery location, the exact location of and number of birds in the rookery varies from year to year, meaning the route may or may not be 1,200 feet from nesting bird colonies during the actual construction period. Thus, in a March 10, 2010 filing, Ruby agreed to coordinate its schedule and construction efforts with the ODFW if construction were to begin prior to or within the recommended avoidance period. Ruby has further agreed that under these circumstances it would begin construction west of the marsh area (out of the line of sight of the rookery area). We find this approach acceptable.

104. The ODFW also requested that Ruby install trench plugs and utilize impermeable soil layer restoration techniques near any crossing in proximity to Garrett Marsh. In its March 10, 2010 filing, Ruby states it will retain a qualified hydrologist to monitor wetland conditions and trench activities in this area for impermeable layers. Ruby also agrees to use specific construction and restoration measures in consultation with the ODFW to reestablish impermeable soil layers.

105. The ODFW requested clarification that it is Ruby's responsibility to conduct fish salvage operations. The EIS states that Ruby will utilize an experienced biologist qualified in fish capture and release techniques to relocate any fish trapped within the isolated work area along the entire project. Ruby would also contact the ODFW at least 48 hours prior to stream crossing construction in Oregon to allow the ODFW an opportunity to conduct fish salvage operations at waterbody crossings in Oregon. We believe that allowing the ODFW to conduct salvage operations appears to be a courtesy offered by Ruby, not a request that ODFW conduct the operations in lieu of Ruby's responsibility.

106. Mr. Billo Comola indicated that the Commission should identify other utility facilities that may be necessary along the Ruby pipeline after it is constructed. As stated in section 4.13 of the EIS, no other planned or foreseeable utility projects are planned at this time that might collocate along the Ruby pipeline. Any proposal to add facilities subject to the Commission's jurisdiction would be reviewed at that time.

V. Conclusion

107. We have reviewed the information and analysis contained in the EIS regarding potential environmental effects of the project, and we adopt its analysis and its

recommendations as our own. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EIS and find that the Ruby pipeline project, if constructed and operated as described in the EIS, is an environmentally acceptable action. This conclusion is also based on the recommended environmental mitigation measures in Appendix A to this order, which will reduce most environmental impacts to less-than-significant levels.

108. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁸¹

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

The Commission orders:

(A) Ruby's and INGAA's requests for rehearing and/or clarification of the September 4, 2009 Order setting forth the Commission's preliminary findings and determinations are granted in part and denied in part, as discussed in this order.

(B) The late motions to intervene filed by INGAA and Defenders of Wildlife are granted.

(C) Ruby is authorized under section 7(c) of the NGA to construct, operate, and maintain natural gas facilities, as described in this order, the September 2009 Order, and the application, and as conditioned herein.

(D) Ruby is issued a blanket construction certificate under subpart F of Part 157 of the Commission's regulations.

(E) Ruby is issued a blanket transportation certificate under subpart G of Part 284 of the Commission's regulations.

⁸¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(F) The authorizations in the above Ordering Paragraphs are conditioned upon Ruby:

- (1) constructing and making available for service the facilities described herein pursuant to paragraph (b) of section 157.20 of the Commission's regulations within two years of the date of this order;
- (2) complying with all regulations under the NGA, including but not limited to Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) executing contracts for the levels and terms of service represented in the precedent agreements, prior to commencing construction.

(G) Ruby shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates.

(H) Ruby's initial rates and tariff are approved, as conditioned and modified in this order and the September 2009 Order.

(I) Ruby shall make a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved into effect, including red-lined tariff sheets reflecting how its actual tariff filing differs from its pro forma tariff, including those changes addressed in the this order and the September 4 Order.

(J) Ruby shall make a filing within three years after its in-service date, either justifying its existing recourse rates or proposing alternative rates, as discussed in this order and the September 2009 Order.

(K) Ruby shall adhere to the accounting requirements discussed in this order and the September 4 Order.

(L) Ruby shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if Ruby determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent upon Gas Plant in Service, such as Income Taxes, Depreciation Expense, Return, and Interest Expense, and file its revised rates and workpapers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

(M) Ruby and its representations made with respect to AFUDC accruals are subject to an audit to determine whether they are in compliance with the revised policy and related Commission rules and regulations.

(N) Ruby shall comply with the environmental conditions set forth in Appendix A of the order.

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

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Environmental Conditions

As stated in the following conditions, “file” means file with the Secretary of the Commission. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the Environmental Impact Statement (EIS).

1. Ruby Pipeline, L.L.C. (Ruby) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the EIS, unless modified by this order. Ruby must:
 - a. request any modification to these procedures, measures, or conditions in a filing;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Ruby shall file an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Ruby shall file any revised detailed survey alignment map/sheets at a

scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Ruby shall file 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 identified in previous filings. 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 route variations specified herein, extra workspace allowed by Ruby's Upland Erosion Control, Revegetation, and Maintenance Plan (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 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 Certificate and before construction begins**, Ruby shall file an Implementation Plan for the review and written approval

of the Director of OEP. Ruby must file revisions to the plan as schedules change. The plan shall identify:

- a. how Ruby will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by this order;
 - b. how Ruby will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread and aboveground facility site, and how Ruby will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;
 - e. the location and dates of the environmental compliance training Ruby will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Ruby's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Ruby will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Ruby shall employ a team (i.e., two or more, or as may be established by the Director of OEP) of EIs per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or 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 this order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Ruby shall file updated status reports **on a weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Ruby's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - 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 this order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Ruby from other federal, state, or local permitting agencies concerning instances of noncompliance, and Ruby's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of project facilities in each state**, Ruby shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof) in each respective state.
10. Ruby shall develop and implement an environmental complaint resolution procedure that remains active **for at least 3 years** following the completion of project construction. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Ruby shall mail the environmental complaint resolution procedure to each landowner whose property would be crossed by the project.

- a. In the letter to affected landowners, Ruby shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter shall indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they should call Ruby's Hotline; the letter shall indicate how soon to expect a response; and
 - (3) instruct the landowners that if they are still not satisfied with the response from Ruby's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030 or at hotline@ferc.gov.
 - b. In addition, Ruby shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and the date of the call;
 - (2) the identification number from the authorized alignment sheet(s) of the affected property and appropriate location by milepost (MP);
 - (3) a description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
11. Ruby must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas of project-related disturbance are proceeding satisfactorily.
 12. **Within 30 days of placing the authorized facilities in service**, Ruby shall file an affirmative statement, 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 the Certificate conditions with which Ruby has complied or will comply. 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.
 13. Ruby shall restrict the use of temporary extra workspaces to those locations identified as "Conditionally Approved for Use" in table E-1, Appendix E of the EIS. (section 4.1.1)

14. **Prior to construction**, Ruby shall file the results of its preconstruction geological investigation to evaluate if abandoned mines are present in the project area. If abandoned mines are present, Ruby shall file a plan to address abandoned mine hazards and file documentation of consultation with the U.S. Bureau of Land Management (BLM) and appropriate state geologists in the development of these plans for the review and written approval by the Director of OEP. (section 4.1.2.1)
15. **Prior to construction from MPs 519.0 to 524.0 and MPs 631.5 to 633.0**, Ruby shall file the results of its preconstruction surveys for mercury-containing rock along these segments, including results of any soil samples collected and analyzed as part of the preconstruction surveys. (section 4.1.2.1)
16. **Prior to construction from MP 613.4 to 614.6**, Ruby shall file the results of its preconstruction survey of this direct use geothermal area. If Ruby identifies geothermal wells or springs in the geothermal area, Ruby shall consult with the Oregon Department of Geology and Mineral Industries to develop appropriate measures to mitigate impacts on these resources and file documentation of consultation and any mitigation plans for review and written approval by the Director of OEP. (section 4.1.2.3)
17. If Ruby identifies karst/pseudokarst features during construction, it shall clearly mark the area of the feature and shall handle and store all fuels, solvents, and lubricants; perform all concrete coating activities; and stage and store all equipment at least 100 feet from the feature. Ruby shall inform the appropriate state natural heritage agency if a feature is opened during construction. In addition, Ruby shall include the identification of these features in its weekly construction status report. (section 4.1.3.3)
18. Ruby shall implement the U.S. Geological Survey's specified soil segregation technique for cryptobiotic soil crusts in the areas of MPs 170.0, 487.9, and 594.0. (section 4.2.2.2)
19. Ruby shall relocate the temporary extra workspaces and a pipe storage yard at MP 487.9 to avoid the underlying playa and file the revised workspace and yard locations for review and written approval of the Director of OEP. Where temporary work areas abut a playa, Ruby shall install exclusion fencing and warning signs around the playa to prevent project disturbance. (section 4.2.2.3)
20. Ruby shall revise its Plan to prohibit expanding the construction right-of-way width for temporary storage of timber, slash, stumps, surface rock, or snow in wetlands, playas, and forested areas. Ruby shall file its revised Plan **prior to construction**. (section 4.2.4)

21. Ruby shall conduct its proposed post-construction well testing **within 30 days of the completion of construction** in the area of each water well presented in table 4.3.1-1 of the EIS. If testing indicates diminished yield, water quality, and/or usability, Ruby shall provide a temporary source of water or provide other remedies as agreed to by the landowner. (section 4.3.1.3)
22. **Prior to construction**, Ruby shall test all springs presented in table 4.3.1-2 of the EIS. Testing shall be conducted using a certified water testing laboratory and shall include analysis of yield; contaminants associated with fuels, lubricants, oils, *etc.*; and standard drinking water parameters. These same springs shall be tested again **within 30 days of the completion of construction** in the area of the spring. If testing indicates diminished yield, water quality, and/or usability of the spring for its permitted or intended purposes, Ruby shall provide a temporary source of water or provide other remedies as agreed to by the landowner. (section 4.3.1.3)
23. **Prior to construction**, Ruby shall file plans developed in consultation with the appropriate state agencies to protect wellhead protection areas. (section 4.3.1.3)
24. Ruby shall revise section IV.A.1 of its Wetland and Waterbody Construction and Mitigation Procedures, and its Waste and Spill Management Specification Plan, to prohibit handling or storage of fuels, solvents, or lubricants; performing concrete coating activities; or staging or storing equipment within 200 feet of any water supply well or spring. (section 4.3.1.4)
25. Ruby shall locate all temporary extra workspaces and staging areas at least 50 feet from waterbodies and limit the construction right-of-way to 115 feet wide in waterbodies. (section 4.3.2.4)
26. Ruby shall discharge all hydrostatic test water to a temporary sediment filtration and energy dissipation structure. (section 4.3.2.5)
27. Ruby shall file site-specific justification that identifies where access road improvements in wetlands are proposed to occur. Ruby shall include an explanation as to why each wetland cannot be avoided and a description of the construction and restoration measures that would be implemented to minimize wetland impacts. Ruby **shall not begin access road improvements in wetlands** until it has received written authorization from the Director of OEP. (section 4.3.3.1)
28. Ruby shall locate all temporary extra workspaces and staging areas at least 50 feet from wetlands and limit the construction right-of-way to 75 feet wide in wetlands. (section 4.3.3.2)

29. **Prior to construction**, Ruby shall file its Wetland Restoration Plan. This plan shall be developed in consultation with the U.S. Army Corps of Engineers (COE) and appropriate state and land managing agencies. This plan shall include measures for seeding and replanting wetland vegetation affected by all project activities and shall identify measures for ensuring wetland revegetation would be successful. (section 4.3.3.3)
30. Ruby shall limit its construction right-of-way width to 75 feet in the woody riparian habitats identified in table 4.4.3-1 of the EIS. For any location where Ruby believes temporary extra workspaces/staging areas are necessary in woody riparian habitat, Ruby shall provide site-specific justification for review and written approval from the Director of OEP **prior to using the temporary extra workspace or staging area**. (section 4.4.3)
31. Ruby shall plant woody riparian vegetation (*e.g.*, shrubs, cuttings, seedlings, saplings) in all woody riparian areas (except directly over the trenchline) as soon as possible after construction within the appropriate planting season, including the riparian areas impacted by access roads. Ruby shall consult with the landowner or appropriate land managing agency to identify the species and planting densities to be used and any methods to protect planted riparian areas from grazing and browsing impacts, such as browse protection or fencing, until these areas become established. Ruby shall monitor the success of riparian habitat restoration for 5 years after construction. **At the end of the 5-year period**, Ruby shall file a report identifying the status of the woody riparian restoration and the need for any additional restoration efforts. (section 4.4.3)
32. Ruby shall incorporate into its project design the U.S. Fish and Wildlife Service (FWS) *Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers*. (section 4.5.1.1)
33. Ruby shall coordinate with the FWS, Nevada Department of Wildlife, and Oregon Department of Fish and Wildlife (ODFW) to determine if and how fish deterrence practices shall be implemented before blasting takes place in any waterbody that has the potential to contain special status fish species as identified in section 4.7 of the EIS. Ruby shall file the results of its consultations with these agencies **prior to crossing the affected waterbody**. (section 4.6.1.7)
34. Ruby shall implement an equipment disinfection plan to incorporate one or more of the following measures during construction as equipment enters and exits each of the 25 Hydrologic Unit Code watersheds crossed by the project and as equipment exits the Little Bear River and all waterbodies known to contain pathogens and nonnative aquatic species that can be spread by contact with construction equipment. Ruby shall remove mud and debris from equipment and either:

- a. keep the equipment dry for at least 10 days prior to use;
- b. spray or soak the equipment with 1) a 10-percent chlorine bleach solution, 2) a 1:1 solution of Formula 409 household cleaner, or 3) a 1:15 solution of Sparquat 256 institutional cleaner, making sure to keep the equipment moist with the cleaner for at least 10 minutes; or
- c. spray or soak the equipment with steam or water greater than 130 degrees Fahrenheit for at least 10 minutes.

Additionally, if Ruby identifies any invasive water organism on any equipment as it leaves a waterbody or wetland, Ruby shall report the sighting to the appropriate state conservation office and implement disinfection measures on all equipment as it leaves the infected waterbody or wetland. (section 4.6.2)

35. Ruby shall revise the site-specific waterbody crossing plans for Twelvemile Creek, Twentymile Creek, Thomas Creek, and Lost River. These plans shall include the proposed crossing method, seasonal timing restrictions, Ruby's proposed construction procedures, and any other measures that would minimize impacts on the Lost River sucker, Modoc sucker, shortnose sucker, and Warner sucker. In addition, Ruby shall file the results of any consultation with the FWS, U.S. Bureau of Reclamation (Reclamation), and ODFW regarding the crossing method and conservation measures for the Lost River. **Ruby shall not begin any construction activities in these waterbodies until:**
 - a. FERC staff receives the requested information, as well as any comments from the FWS, Reclamation, and ODFW;
 - b. staff completes any necessary Section 7 consultation with the FWS; and
 - c. Ruby has received written notification from the Director of OEP that construction or use of mitigation may begin. (section 4.7.2.4)
36. Ruby shall **not begin construction** in any area where Ute ladies'-tresses are identified during preconstruction surveys until:
 - a. FERC staff receives the survey report for the Ute ladies'-tresses sighting, as well as any comments from the FWS regarding project impacts on this species;
 - b. staff completes any necessary Section 7 consultation with the FWS; and
 - c. Ruby has received written notification from the Director of OEP that construction or use of mitigation may begin. (section 4.7.2.6)
37. Ruby shall control the outflow of hydrostatic test water discharge structures to ensure that discharge water does not reach occupied pygmy rabbit burrows at MPs 6, 41.4 to 41.6, 56.5 to 59, 260.9 to 261, and 275.8. (section 4.7.3.3)

38. Ruby shall modify the right-of-way configuration (*e.g.*, use the opposite side of the right-of-way to operate vehicle traffic) or reduce the construction right-of-way width to 75 feet where crossing known white-tailed prairie dog colonies to avoid burrows to the greatest extent possible. In addition, where a colony only occurs along the edge of the construction right-of-way, the colony edge shall be flagged or exclusion fencing be erected to avoid impacts on burrows. (section 4.7.3.4)
39. Ruby shall file with its quarterly reports (as specified in Ruby's Plan, section VII.B.2) details discussing whether any complaints were received concerning the restoration of the precision-leveled fields crossed by the project and how each was resolved. (section 4.8.1.3)
40. Ruby shall continue to work with the Utah Division of Wildlife Resources and FWS to ensure all project impacts on the East Fork and Salt Creek Wildlife Management Areas' (WMA) resources are fully addressed via development of a WMA Impact Management and Mitigation Plan. (section 4.8.2.2)
41. Ruby shall provide its Northwestern Nevada Sensitive Area Contractor Education training to all of its contractor personnel working between MPs 490 and 580. (section 4.8.3.6)
42. Ruby shall coordinate with all jurisdictional fire response authorities affected by the project to revise its Fire Prevention and Suppression Plan to meet the standards of those authorities. The revised plan, along with any agency comments on the plan, shall be filed for review and written approval of the Director of OEP **prior to construction**. (section 4.9.3)
43. Ruby shall work with local governmental agencies in Elko, Winnemucca, in the area of the Vya Construction Camp, and where conflicts with mining traffic may occur to identify all areas where traffic could be disrupted by construction or construction-related traffic and define specific traffic control plans for each of these locations. These plans shall include (at a minimum) a commitment to provide, as necessary:
 - a. signage to identify approaching construction or access points;
 - b. daily review and cleanup of sediment deposits and pavement damage on roadways; and
 - c. traffic control personnel in areas of lane closures or heavy traffic.

The traffic control plans shall be filed for review and written approval of the Director of OEP **prior to construction**. (section 4.9.4)

44. Ruby **shall not begin construction** of facilities, including the pipeline, compressor stations, and meter stations; and/or use of all staging, storage, or temporary work areas, and new or to-be-improved access roads **until**:
- a. Ruby addresses any comments on the cultural resources survey reports, addendum reports, and supplemental studies;
 - b. Ruby files:
 - i. any required revised reports/studies and the BLM's, U.S. Forest Service's (USFS), Reclamation's, COE's, FWS', State Historic Preservation Offices' (SHPO), and any Native American tribes' (as appropriate) comments on the revised reports/studies;
 - ii. any additional required cultural resource survey and evaluation reports, and avoidance and mitigation/treatment plans, and addresses any other information that the SHPOs, BLM, USFS, Reclamation, COE, or FWS request; and
 - iii. the SHPOs', BLM's, USFS', Reclamation's, COE's, FWS', other appropriate state agencies', and any Native American tribe's (as appropriate) comments on the reports and plans;
 - c. the Advisory Council on Historic Preservation has commented on the project; and
 - d. the FERC staff reviews and the Director of OEP approves the cultural resource reports and plans, and notifies Ruby in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All material filed with the Commission that contains **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering "**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**" (section 4.10.5)

45. Ruby shall make all reasonable efforts to ensure its predicted noise level from the Wildcat Hills Compressor Station is not exceeded at the nearest noise-sensitive area (NSA). Ruby shall file noise surveys **no later than 60 days** after placing this compressor station in service. If the noise attributable to the operation of all of the equipment at the Wildcat Hills Compressor Station at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby NSAs, Ruby shall install additional noise controls to meet the level **within 1 year** of the in-service date. Ruby shall confirm compliance with the above requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls. (section 4.11.2.4)

46. Ruby shall provide copies of its geotechnical reports (filed September 22, 2009) to the Oregon Department of Geology and Mineral Industries (ODGAMI) and file any comments on the reports from ODGAMI. **Prior to construction in Oregon**, Ruby shall file any revisions and updates to the geotechnical reports based on its consultations with ODGAMI.