

UNITED STATES OF AMERICA

Before the

FEDERAL ENERGY REGULATORY COMMISSION

Application of
RUBY PIPELINE, L.L.C.
at Docket No. CP09-____-000

Pursuant to Section 7(c)
of the Natural Gas Act

for a Certificate of Public Convenience and Necessity
Authorizing the Construction and Operation
of the Ruby Pipeline Project

and

Pursuant to Parts 157 and 284 of the
Federal Energy Regulatory Commission's
Regulations Under the Natural Gas Act and
Natural Gas Policy Act, Respectively,
Authorizing Blanket Construction and
Abandonment of Facilities and Services and
Open-Access Self-Implementing Transportation Services

Dated: January 26, 2009

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Ruby Pipeline, L.L.C.)

Docket No. CP09-____-000

Application of Ruby Pipeline, L.L.C. for a
Certificate of Public Convenience and Necessity

Ruby Pipeline, L.L.C. ("Ruby") hereby applies to the Federal Energy Regulatory Commission ("Commission"), pursuant to Section 7(c) of the Natural Gas Act ("NGA") and Parts 157 and 284 of the Commission's Regulations under the NGA, for (i) a certificate of public convenience and necessity authorizing the construction, ownership, and operation of new interstate natural gas pipeline facilities; (ii) a blanket certificate of public convenience and necessity authorizing Ruby to provide open-access transportation services, with pre-granted abandonment approval; and (iii) a blanket certificate of public convenience and necessity to construct, operate and/or abandon certain eligible facilities, and services related thereto. Ruby is also requesting approval for its proposed recourse rates for transportation service and of its Pro Forma Tariff, which includes the authority to enter into negotiated rate agreements. In addition, Ruby respectfully requests that the Commission issue a Preliminary Determination on Non-Environmental Issues ("PD") by late July or early August 2009 that includes the review and preliminary approval of various contract, rate and tariff provisions, all as more fully discussed herein. The pipeline project being proposed will be referred to as the "Ruby Pipeline Project" or "Project."

EXECUTIVE SUMMARY

The Ruby Pipeline Project is proposed to provide a reliable means of delivering growing, competitively priced natural gas supplies from the Rocky

Mountain region to various end-users throughout the Project area, including California, the Pacific Northwest and Nevada.

The Project is comprised of approximately 675.2 miles of 42-inch outside diameter natural gas pipeline, compression facilities and measurement facilities, located between Opal, Wyoming and Malin, Oregon. Compression facilities for the Project will consist of four stations located along the pipeline in Uinta County, Utah, Box Elder County, Utah, Elko County, Nevada, and Humboldt County, Nevada. The Project will also include an approximate 2.6-mile lateral, the Pacific Gas and Electric Company (“PG&E”) Lateral, to be constructed south from the Malin Hub to connect PG&E facilities to Ruby Pipeline facilities at the California/Oregon border. As proposed, the Project will have a design capacity of up to approximately 1.5 million dekatherms per day (“MMDth/d”).¹ Since capacity marketing efforts are still ongoing, the final design capacity may be adjusted depending on final subscriptions. The Project route will touch four states: Wyoming, Utah, Nevada, and Oregon. The estimated capital cost for the Project is approximately \$2.96 billion.

In support of the Ruby Pipeline Project, Ruby has secured approximately 1.2 MMDth per day of binding commitments from customers generally under 10 to 15-year contracts. The level of commitments received to date provides adequate commercial critical mass and financial support to proceed with the economic construction of Ruby. Nonetheless, Ruby’s is continuing its marketing efforts to increase the level of contract support.

Ruby is also seeking approval of its Pro Forma Tariff and various provisions which are discussed further in this application. Ruby’s tariff proposes a two-part recourse rate for firm transportation service based on the total cost-of-service and an assumed 35-year life of the Project. Ruby is also proposing a one-part recourse rate

¹ The volumetric equivalent capacity of the pipeline is approximately 1,456 Mcf/day as described in Exhibit G.

for interruptible transportation service that is equal to the 100 percent load factor equivalent of the Rate Schedule FT-1 firm rate. Ruby requests authorization for the Project by January 2010. The date allows Ruby to construct the pipeline efficiently during narrow construction windows, which are primarily the result of wildlife issues and early season, high altitude snowfall, and to achieve a targeted in-service date of no later than March 2011. Ruby is requesting the issuance of a PD by late July or early August 2009 to provide certainty for project sponsor(s), shippers, and lenders.

In support hereof, Ruby respectfully represents:

I.

Ruby's exact legal name is Ruby Pipeline, L.L.C. Effective November 5, 2007, Ruby was created as a wholly owned indirect subsidiary of El Paso Corporation. Ruby is a limited liability company duly organized and existing under the laws of the State of Delaware, having its principal place of business located in Colorado Springs, Colorado. Ruby is authorized to conduct business as a foreign limited liability company in the States of Wyoming, Idaho, Nevada, Utah, and Oregon in order to engage in open-access transportation services and to own and operate transmission facilities within those states.²

II.

Currently, Ruby neither owns nor operates any interstate pipeline facilities nor does it provide any services subject to the Commission's jurisdiction. However, upon receipt of the authorizations requested herein, the construction of the proposed facilities, and commencement of operations as proposed in this Application, Ruby will become a "natural gas company" within the meaning of Section 2(6) of the NGA and will be subject to the jurisdiction of the Commission under the NGA.³ Ruby Pipeline, L.L.C. is currently a 100 percent indirect subsidiary of El Paso Corporation.

² The certificate of formation for Ruby is included as Exhibit A.

³ Ruby will provide transportation service in interstate commerce under the terms of its FERC Gas Tariff, a pro forma copy of which is included as Exhibit P.

III.

REGULATORY AUTHORIZATIONS REQUESTED

In this Application, Ruby seeks authorizations under Section 7(c) of the NGA and Parts 157 and 284 of the Commission's Regulations under the NGA, for: (i) a certificate of public convenience and necessity authorizing the construction, ownership, and operation of new interstate natural gas pipeline facilities; (ii) a blanket certificate of public convenience and necessity authorizing Ruby to provide open-access transportation services, with pre-granted abandonment approval; and (iii) a blanket certificate of public convenience and necessity to construct, operate and/or abandon certain eligible facilities, and services related thereto. Ruby is also requesting approval of its proposed recourse rates for transportation service and its Pro Forma Tariff, which includes the authority to enter into negotiated rate agreements. In addition, Ruby respectfully requests that the Commission issue a PD by late July or early August 2009, that includes the review and preliminary approval of various contract, rate, and tariff provisions, all as more fully set forth below.

Background

The primary customer base for the proposed Ruby Project consists of two groups: 1) end users in Northern California, Nevada, and the Pacific Northwest, and 2) Rockies Producers. Although very recent economic indicators now suggest slower projected economic growth and concurrent business and electric generation development, there is and will be an increasing, long-term demand for natural gas in the Project area. Combined with increasing consumer demand, end-users in Northern California, Nevada, and the Pacific Northwest face declining exports of Canadian natural gas on which they currently rely. Because Canadian supplies are declining at a time when Canadian market demand is growing and because Western Canadian supplies are connected to multiple in-country and export pipeline alternatives, recent prices for Western Canadian supplies have been elevated relative to North American benchmarks such as the Henry Hub and NYMEX index prices. Canadian natural gas prices are forecasted to remain relatively high. Consequently, even if gas demand slows in the near term, an alternative to the

natural gas supplies originating from Canada should be sought. The Project provides the new infrastructure to move the historically lower priced domestic natural gas supplies originating from the Rocky Mountain supply areas to the Project area demand regions that currently find themselves largely captive to declining Canadian supplies. These flexible and reliable Rocky Mountain supplies will help serve as an efficient backstop for new renewable energy sources as they are brought online in the Project area and integrated into the regional energy infrastructure. In summary, Ruby would (i) provide an alternative to declining, higher priced Canadian supplies; (ii) increase supply diversity; (iii) enhance pipeline and supply source reliability; (iv) promote gas-on-gas competition; and (v) serve as a reliability backstop for renewal energy sources.

Canadian Production & Export Decline

Canadian gas production peaked around 2001 and has decreased since. Steeper declines are forecasted.⁴ Even the recent development of shale exploration plays in western Canada, which are anticipated to result in additional recoverable reserves at some point in the future, will not be enough to offset the declines contemplated for the region.⁵

Meanwhile, demand for natural gas in Canada is growing. In its 2008 International Energy Outlook, the EIA forecasts that Canadian gas demand will grow at a rate of 1.5 percent per year, increasing demand from 3.4 Tcf/year in 2005 to 5.0 Tcf/year in 2030.⁶ This increased demand is being driven by Canada's industrial natural gas consumption, including the conversion of coal-fired electric generation to clean gas burning generation pursuant to Canada's participation in the Kyoto Protocol, and that industrial consumption is projected to grow 2 percent per year.⁷ Given the natural gas consumed in mining local oil sands deposits and other

⁴ See the Canadian National Energy Board's "Short-term Canadian Natural Gas Deliverability 2008-2010" report dated October 2008.

⁵ See Energy Information Administration (EIA), Canada: Country Analysis Brief; <http://www.eia.doe.gov/emeu/cabs/Canada/Full.html>, accessed January 15, 2009.

⁶ See EIA, *International Energy Outlook 2008*; June 2008.

⁷ Ibid.

residential, commercial and industrial uses, Canada is projected to consume 93 percent of its own production in 2030, compared with 52 percent in 2005.⁸ The increased domestic gas consumption, coupled with the projected decline in Canada's natural gas production, will exacerbate the decline in available Canadian supplies, leaving less Canadian natural gas available for export.

Consumers in Northern California and the Pacific Northwest currently rely significantly on natural gas supplies received from Canadian sources in part due to pipeline capacity constraints within California and Washington. The decreased availability of Canadian natural gas to Northern California, Nevada, and the Pacific Northwest has reduced its price competitiveness compared to natural gas from other gas production basins. Northern California and Pacific Northwest consumers must essentially purchase the Canadian supplies at any cost since today they have limited alternatives. As a result, consumer groups in these areas have sought alternative natural gas sources to replace the declining Canadian gas supplies, increase reliability, and provide price competition.

Ruby will help to offset the decline in available Canadian export supplies by transporting additional Rocky Mountain supplies to the Malin Hub in southern Oregon for downstream off-system deliveries to California, the Pacific Northwest and Nevada. The Rockies supplies that would be transported by Ruby into these demand regions would have a price and reliability advantage over the delivery options that are currently available. Without the Project, this demand region will have to pay higher prices to compete with consumers in Canada, the Midwest, and East Coast for the decreasing Canadian supplies. In summary, the desire for additional sources of competitively priced gas supply has created significant consumer demand for Ruby.

⁸ Ibid.

Consumer Group Demand

United States natural gas consumption increased between 2006 and 2007 by 6.2 percent from 21.7 trillion cubic feet (TCF) to 23.0 TCF.⁹ Furthermore, the EIA forecasts that natural gas consumption will increase by nearly 2 TCF by 2015.¹⁰ Like the rest of the United States, the biggest growth in demand for natural gas on the West Coast and in Nevada is from the electric power generation sector. Ruby recognizes that future electric power generation will also utilize alternative renewable fuels. However, one of the main limitations associated with these renewable alternatives is the ability to dispatch effectively, or the ability to "turn-on" these sources at will to meet demands for electricity. Electricity generation alternatives such as wind or solar power generation are limited by their intermittency. While hydropower is a less intermittent alternative than wind or solar power and is generally affected by seasonal availability, hydropower reliability is still subject to climate meteorological factors. To ensure their reliability, power generators have elected to integrate these alternatives into power generation portfolios that generally include natural gas-fired generation facilities. By doing so, the use of the alternative power generation facilities is maximized while assuring electric power reliability is "backstopped" by natural gas-fired power generation facilities. Furthermore, as the United States continues its transition to alternative power generation, natural gas will serve as a "bridge fuel" to ensure a successful transition to these new-technology power alternatives.

Pacific Northwest

Although Washington is a major net exporter of hydroelectricity, the Pacific Northwest fuels more than 20 percent of its electric generation with natural gas, and the use of natural gas for electricity is expected to increase about 12 percent through 2012.¹¹ Between 1998 and 2006, two thirds of new electric generation capacity in

⁹ See Energy Information Administration. 2008; Office of Oil and Gas, Natural Gas Year-in-Review 2007, March 2008.

¹⁰ Ibid.

¹¹ See Northwest Gas Association (NWGA), *Natural Gas Prices in the Pacific Northwest*, Volume 3, Issue 1, 2008.

the Pacific Northwest was gas-fired and the remainder was wind-powered. Because drought conditions can significantly reduce hydroelectric production, and wind generation is intermittent, the Northwest Power and Conservation Council expects that most new electric generating capacity will be natural gas fired and will serve as a backstop to these electrical power generation alternatives.¹²

Similarly, demand for natural gas for non-electric-power-generation purposes is also projected to increase. The Northwest Gas Association estimates that natural gas consumption for industrial and end-user consumers will increase about seven percent by 2012.¹³ Longer term projections of natural gas consumption also illustrate continued growth. A report prepared for the Washington Energy Facility Council anticipates that total natural gas consumption in Washington and Oregon could reach 741 billion cubic feet (Bcf) per year by 2025, an increase in demand of more than 50 percent.¹⁴

Oregon imports nearly all of its natural gas, with two thirds coming from Canada and one third coming from the Rocky Mountains at this time. More than 1 million people will be living in Oregon by 2030.¹⁵ Renewable sources of energy are increasingly important, but natural gas will play a key role in ensuring that the region's current and growing energy demand is met.¹⁶ From a policy perspective, Oregon also has determined that natural gas "will continue to be needed in Oregon in the foreseeable future. It will continue to serve as a fuel which is cleaner than other fossil fuels, as we transition toward a more sustainable energy future."¹⁷

¹² See State of Washington Department of Community, Trade, and Economic Development, 2007, *Biennial Energy Report, Issues and Analysis for the Washington State Legislature and Governor*, January 2007.

¹³ See NWGA, *Natural Gas Prices in the Pacific Northwest*, Volume 3, Issue 1, 2008.

¹⁴ See ICF International (ICF), *Review of Pipeline Utility Corridor Capacity and Distribution for Petroleum Fuels, Natural Gas and Biofuels in Southwest Washington*; November 16, 2007.

¹⁵ See Oregon Office of Economic Analysis; *Forecasts of Oregon's County Populations and Components of Change, 2000 – 2040*; http://www.oea.das.state.or.us/DAS/OEA/docs/demographic/pop_components.xls; accessed January 23, 2009.

¹⁶ See Northwest Gas Association, 2007, *Northwest Gas Outlook – Natural Gas Demand, Supply, and Service Capacity in the Pacific Northwest for Years 2007 – 2012*.

¹⁷ See Oregon Department of Energy (ODE), 2008, *Response to Governor Kulongoski's Request for LNG and Natural Gas Review*, May 7, 2008.

California

California also expects moderate long term gas consumption growth but expects, in the near term, natural gas demand will be flat to declining. The major area for growth within the state is in the residential sector which is expected to increase at an annual average rate of 0.3 percent.¹⁸ The largest consumers of natural gas in California are electric power generators which use about half of all natural gas consumed in the state.¹⁹ Overall gas demand for electric generation, however, is expected to be flat for the next 22 years due to efforts to minimize Greenhouse Gas emissions through demand side reductions and customer energy efficiency programs. Natural gas will be the fuel of choice in the electric generation sector for the purpose of load following and backstopping intermittent or seasonal renewable electric power generation, such as hydropower, solar and wind sources. Regionally, natural gas demand in Northern California is projected to grow at an annual rate of 4.6 percent through 2030.

Nevada

The demand in Nevada for natural gas is also largely expected to be driven by electric power generation. Even though Nevada has large geothermal and hydroelectric power generation resources, the majority of electricity in Nevada is generated by coal or natural gas. However, stricter air emission standards and new facility permitting requirements for coal-fired generation facilities will make it increasingly difficult to meet future demand for electric power from coal-fired generation facilities. Such permitting challenges are already evident. For instance, in 2007, the operation of the first 750 megawatt coal unit of the Ely Energy Center was delayed due to permitting problems and the state's utilities have stated that

¹⁸ See California Energy Commission (CEC), *California Natural Gas Data and Statistics*; <http://energyalmanac.ca.gov/naturalgas/index.html>; 2008.

¹⁹ Ibid.

further delays or cancellation of coal-fired power plants are possible.²⁰ The challenges faced by coal-fired electricity generators will make natural gas-fired power generation facilities a more favorable alternative because of their low air emissions. Thus, natural gas demand will increase as it continues to be the fuel of choice in electricity generation, based on these overriding public policy drivers.

In addition, the construction of a major natural gas pipeline across the northern Nevada will give communities in the vicinity of the Project corridor an opportunity to access a new natural gas source for residential, commercial, or industrial purposes.

Strong Producer Demand for Ruby

The declining Canadian natural gas supply dynamic discussed earlier has been complemented by Rocky Mountain producer demand for more pipeline takeaway capacity. Currently, interstate natural gas pipelines transporting gas out of the Rocky Mountains to regions along the Rocky Mountain Front Range, the Midwest, the Southwest (including Southern California), the Pacific Northwest, and the East Coast, are either fully or nearly fully subscribed and are heavily utilized day-to-day with the most demanding operational period for exports occurring during the summer months when Intermountain West local demand is lowest. High capacity utilization levels on these pipelines and depressed local prices demonstrate that there is insufficient pipeline infrastructure to transport the increasing natural gas supplies out of the Rocky Mountain region. The development of the Project will provide additional necessary “takeaway” or export infrastructure. As reflected by the contract commitments received to date, Ruby will provide producers in the region an additional competitive long-term option to deliver their natural gas supplies to regions that need additional gas supplies in the western United States.

²⁰ See The Ely Times, *Ely Energy Center Delayed*; <http://www.elynews.com/articles/2007/12/06/news/news01.txt>; December 6, 2007; accessed November 15, 2008.

Rocky Mountain Natural Gas Supply

The major production basins that have the ability to supply natural gas to the Opal Hub from the Central Rocky Mountain ("CRM") area include the Big Horn, Wind River, Greater Green River, Overthrust, Uinta, Piceance, Powder River, Paradox, Raton, and Denver Basins. According to a Potential Gas Committee December 31, 2006 report, and an Energy Information Administration ("EIA") December 31, 2007 report, these basins have a combined, total proved and potential most likely resource of 240 Tcf.²¹ Natural gas reserves of this size would last for 68 years at current production rates.²²

EIA data for Colorado, Utah, and Wyoming natural gas production areas show that total proved reserves grew at an annual rate of 10.3 percent from 22.2 Tcf in 1998 up to 58.0 Tcf in 2007.²³ The rapid increase in proven reserves expected for the Rockies is attributable to increased exploration and exploitation of unconventional gas reserves through the use of new technology.²⁴ With this available resource and all the activity currently planned in the CRM area, there is no reason to believe that this reserve growth trend will not continue into the future.

Production from the CRM area follows a similar trend to that of proved reserves. CRM production has been increasing by an average rate of 6.7 percent between 1998 and 2007 and 6.5 percent during the past five years.²⁵ As a result of these trends, the CRM production increases during this time period amounted to approximately 4,873 MMcf per day.²⁶ In the same manner, gas well drilling activity continues at a robust pace. Both the resource base and production development plans support projections for robust long-term production growth from the CRM area.

²¹ Refer to Table 1 in Ruby's Exhibit H, Total Gas Supply Data.

²² Consistent with Commission practice, the supply life for development of the depreciation rate has been truncated to 35 years. Please see the Explanatory Statement included in Exhibit N herein for a description of depreciation rate development.

²³ Refer to Figure 1 in Ruby's Exhibit H, Total Gas Supply Data.

²⁴ Navigant Consulting, 2008, North American Natural Gas Supply Assessment, prepared for the American Clear Skies Foundation, July 4, 2008.

²⁵ Refer to Ruby's Exhibit H, Total Gas Supply Data.

²⁶ Ibid.

According to a report by Wood Mackenzie, an estimated 43,000 gas wells will be drilled between 2006 and 2010 in the Rocky Mountains.²⁷ The result of this drilling activity will be continued production growth. Ruby forecasts that the CRM area production volumes will increase by 3,424 MMcf/d from 2007 through 2017 under the base case scenario (which fully considers the current economic liquidity crisis and resultant drilling impacts), and by 4,715 MMcf/d during the same period under the high case scenario.²⁸

Pipeline Infrastructure

Production growth in the Rocky Mountain supply basins has already supported the construction of a number of pipeline projects including the Kern River pipeline expansions (including Kern River's proposed 2010 Expansion that would add 145,000 Dth per day of capacity), the Cheyenne Plains pipeline, and, most recently, the West and East Rockies Express Expansion ("REX") Projects.²⁹ Within the past five years, expansion projects have added over 4.5 Bcf/d of takeaway capacity from the region and, as of August 2008, all of the aforementioned pipelines were operating at or near capacity.

Despite the addition of new take-away pipeline infrastructure projects, growth in natural gas production from the Rockies has outpaced the available pipeline capacity. In this environment, natural gas production drives the development of new pipeline capacity infrastructure. This is often referred to as the "producer push" or "supply push" phenomenon. However, natural gas production increases often are realized faster than the timing required for the permitting and development of new

²⁷ See Wood Mackenzie, Highlights, *Rockies: Banking on Continued Success - US\$25 billion Planned Drilling Investments*; <http://www.woodmacresearch.com/cgi-bin/wmprod/portal/energy/highlights/Detail.jsp?oid=747583>, accessed January 13, 2009.

²⁸ Refer to Ruby's Exhibit H, Total Gas Supply Data.

²⁹ See Kern River's 2003 Expansion Project in Docket No. CP01-422-000 and 2010 Expansion Project in Docket No. CP08-429-000; Cheyenne Plains Gas Pipeline Company, L.L.C.'s Cheyenne Plains Project in Docket No. CP03-302-000, et al., and Cheyenne Plains Expansion Project in Docket No. CP04-345-000; and REX's "Entrega Gas Pipeline Project" in Docket No. CP04-413-000, REX West and East Projects in Docket Nos. CP06-354-000 and CP07-208-000, respectively.

pipeline infrastructure projects which results in depressed regional prices. For example, the last two major export pipeline projects constructed out of the Rockies, Cheyenne Plains Expansion Project and the REX West Project, were both heavily supported by producers. Both projects had initial contract profiles with a majority of producer commitments (62 percent and 80 percent, respectively) of the total pipeline capacity. While production area gas prices improved when the pipelines went into service, within months, Rockies prices were once again depressed resulting in a push for additional export projects. Expansions of Cheyenne Plains were completed relatively quickly after the initial project was built.

The recent commissioning of the REX West Pipeline is a good illustration of a “supply push” pipeline which was operating at capacity very quickly after its initial in-service date. When it was placed in-service in early 2008, natural gas exports from the Rockies grew at an unprecedented rate. Conventional wisdom anticipated that the REX West Project would provide several years of growth capacity once constructed. Instead, the export pipelines out of the Rockies operated at a 94 percent load factor during the summer of 2008 (April to October) and all of the export pipelines, including REX, were much more fully used than almost any market participant had previously expected. This pipeline-constrained environment resulted in the Opal or Cheyenne Hub index price trading at more than a \$3.00 discount to Henry Hub during this time period. These large pricing disparities across regions illustrate the enormous opportunity cost imposed on Rockies Producers if no new export pipeline is constructed and the enormous value of additional takeaway capacity to those Producers – capacity that will have the effect of better aligning regional pricing with national pricing and that will have the effect of providing the appropriate incentives and market signals for increased production. Because natural gas is a key element in national energy security policies and energy independence, it is in the public interest to ensure that insufficient access to transportation services does not artificially constrain the exploration and production of domestic natural gas.

In the last two years, six major pipeline marketing proposals to construct additional capacity out of the Rocky Mountain region were announced by different pipelines. Of all these solicitations, the Ruby Pipeline Project was able to secure the greatest amount of contract commitments (approximately 1.2 MMDth/d), and it is the only proposed project that has received endorsement from the Public Utilities Commission of California ("CPUC"), by virtue of its approval of PG&E's agreement for transportation service on the Ruby pipeline. Ruby had the most success generating commitments because it timely recognized the need for a new major Rockies greenfield pipeline, proposed a west-flow route before any other, and has aggressively sought contract support and actively undertaken field survey work well ahead of its competition. This favorably positioned Ruby to provide the most timely pipeline alternative for end users in northern California, Nevada, and the Pacific Northwest seeking to diversify their natural gas supply portfolio and for Rocky mountain producers seeking additional takeaway capacity.

Ruby acknowledges that recent financial liquidity concerns and constrained access to capital have led to a moderated natural gas exploration environment. Producers have reduced their capital spending for 2009 and, in general, have reduced drilling programs across the United States, including the Rocky Mountain production areas. Ruby anticipates that such spending cuts may temporarily reduce the number of active rigs in the Rockies. Ruby has concluded, however, that these drilling cutbacks will not result in flat or declining production profiles.³⁰ Instead, production growth will continue, but the slope of the growth curve will be moderated as drilling is reduced in the near term. The drilling program cuts announced to date have primarily been in the Piceance, Uinta and Raton Basins. Ruby does not expect significant cuts in the prolific Green River basin. The Green River basin offers the lowest drilling cost for unconventional gas production in the United States and will account for the majority of the near-term overall Rockies supply growth. Even with

³⁰ See "Questar: Mid-continent Returns Beat Rockies," Natural Gas Intelligence ("NGI") – November 3, 2008; "Piceance Basin Producers Pull Back – Who's Next?" NGI – November 24, 2008; "Encana Sets Flexible Plan for 2009, Cuts Colorado Capex," NGI – December 15, 2008; and "Outlook: Production, Solid Contracts to Sustain Pipeline Build," NGI – January 12, 2009.

near-term reduced drilling programs in the Rockies, supply growth is still expected to continue, exacerbating the capacity bottleneck that became evident in 2008. Ruby expects drilling activity will “bottom out” in 2009 and will begin to increase thereafter.

Projected Gas Flows for Ruby

Ruby anticipates that it will operate at a high utilization factor as a result of favorable supply pricing at Opal and its anticipated low variable costs. The impact of a pricing advantage and the demand for Rocky Mountain natural gas was illustrated by the level of pipeline utilization experienced when the Rockies Express Pipelines West Project (“REX West”) facilities were placed into service. The REX-West segment runs from Cheyenne to interconnections with four interstate pipelines in the mid-continent states. As highlighted above, the pipeline was placed in service on January 12, 2008 and fully utilized its 1.5 Bcf/d capacity in mid-June 2008, roughly 5 months after operation began. The progression from in-service to extremely high utilization was much more rapid than was generally anticipated. Furthermore, all of the gas being transported by the REX-West facilities was incremental supply, which left the existing export pipelines full. The combination of the high export pipeline utilization and the unavailability of additional capacity drove Rockies natural gas prices down over the second half of 2008, demonstrating a need for additional pipeline takeaway capacity.

Based on these dynamics in natural gas supply and demand, Ruby expects it will also operate at a high load factor very quickly following the in-service date and will provide benefits to customer groups in Northern California, Nevada, and the Pacific Northwest through: i) increasing natural gas reliability derived from pipeline infrastructure diversity; ii) increasing optionality in natural gas supply basin access; and, iii) providing pricing advantages resulting from more gas-on-gas competition.

IV.

DEVELOPMENT OF THE PROJECT AND MARKET SUPPORT

The Ruby Pipeline Project has been in development for some time. Early in 2007, PG&E began negotiations with Ruby to develop a project that would deliver gas to Malin, Oregon and concluded with the execution of a Precedent Agreement (“PA”) dated December 19, 2007 (and executed by PG&E on December 20, 2007) for 375 MDth/d of capacity from receipt points near the Opal Hub to a delivery point near the Malin Hub.³¹ The PG&E capacity commitment secured capacity for two PG&E business divisions: the Core Gas Supply and the Electric Fuels Supply functions.³² Since these two business units were divisions of one company (and not separate, affiliated companies), Ruby permitted PG&E to combine the quantities from its two divisions to qualify it as an anchor shipper.

Ruby conducted two open seasons soliciting additional shipper support for its project. An initial open season was held from February 15, 2008 to April 18, 2008 in which Ruby offered both recourse rate options and negotiated rate options. During this open season, all potential shippers had the opportunity to bid for and qualify for anchor rates and terms based on the size and length of the contract commitment. At the conclusion of the open season, Ruby continued negotiations with potential shippers and was able to execute most of the PAs by June 2008, totaling approximately 1,223 MDth/d of transportation capacity.

Ruby held a second open season from September 15, 2008 to September 29, 2008, and later extended it to October 10, 2008. This open season primarily addressed the capacity that was not subscribed as a result of the various start dates

³¹ On May 18, 2007, PG&E and Colorado Interstate Gas Company (“CIG”), acting as an agent for Ruby, negotiated a confidentiality agreement under which transportation terms were negotiated throughout 2007 culminating with the execution of a PA.

³² The Core Gas Supply Department is the purchasing arm for PG&E’s core (residential and small commercial) natural gas customers and is also responsible for brokering pipeline capacity. The Electric Fuels Supply function manages gas supply and gas price risk for PG&E’s electric portfolio and also purchases and sells natural gas, gas financial products, transportation, and storage services.

and ramp-up provisions in the PAs that were executed in the initial open season. However, at the conclusion of the second open season, no additional PAs were executed. Ruby has also had a “Notice of Available Capacity” posted on its website where available capacity has been offered for sale.

Firm Shipper Commitments

Ruby currently has binding transportation commitments under 14 separate, negotiated rate PAs with a combined maximum daily quantity ("MDQ") of 1,223 MDth per day. The terms of the PAs range from 5 to 15 years. Generally, the shippers on Ruby will receive quantities at or near the Roberson Creek Compressor Station near Opal, Wyoming and will transport their quantities to Malin, Oregon. Shippers will also have the option to deliver their natural gas quantities on an alternate basis into the Paiute Pipeline Company and Tuscarora Gas Transmission Company pipeline systems. Since marketing efforts are still ongoing, Ruby will notify the Commission of any additional capacity subscriptions executed after the certificate application is submitted.

As will be discussed in more detail below, Ruby’s shippers have all requested negotiated rates. Therefore, Ruby and its project sponsors will bear the risk of construction cost execution.

By installing 42” pipe initially, the environmental impacts of future trenching can be minimized. Ruby can later economically expand its capacity up to approximately 2.0 MMDth/d through the installation of additional compression facilities at various points along the pipeline, subject to the receipt of necessary regulatory authorizations, which would provide significant incremental future capacity. Conversely, modification of the proposed compression facilities could also be used to reduce the total Project capacity.

Ruby's current Project design provides 1.5 MMDth per day of capacity. Once Ruby's marketing efforts are completed, the capacity design will be finalized with the potential for compressor unit reduction if the total subscription is less than 1.5 MMDth per day.³³ If circumstances warrant, Ruby will submit a request to construct the last station on a delayed schedule or will submit an amendment to its Application requesting a capacity design reduction. Ruby would make such a request or amendment by late in the second quarter 2009.

CPUC Proceeding

The first shipper to enter into a volume commitment on Ruby was PG&E, a utility serving northern California. PG&E's rates, services and operations are subject to the jurisdiction of the CPUC. PG&E currently holds a total of 375 Mth/d of transportation capacity on Ruby. PG&E's Core Gas Supply function holds 250,000 Dth per day of capacity and its Electric Fuels Supply function holds 125,000 Dth per day of capacity with a contract term of approximately 15 years.³⁴ Prior to finalizing its transportation commitment on Ruby, PG&E was required to secure CPUC pre-approval of the PA.³⁵ The CPUC issued its decision unanimously approving PG&E's Ruby PA on November 7, 2008. The CPUC approved PG&E's capacity commitment on the Ruby Pipeline as well as full recovery of the capacity costs from PG&E's "core" electric and gas ratepayers. In particular, the CPUC reviewed and approved PG&E's anchor contract rate, as well as the fuel rate adjustment, the maximum daily quantity reduction, the most-favored nation, and creditworthiness provisions. PG&E also received authority for the Electric Fuels Supply function to hold matching downstream capacity on PG&E's intrastate pipeline.

³³ The removal of the compressor unit or station will have a minimal effect on the ongoing environmental review of the Project since it will simply delete a proposed unit or station.

³⁴ PG&E negotiated for the option to reduce its maximum daily quantity during the last four years of the contract on an agreed upon schedule and/or for a right of renewal of the capacity commitment at the end of the initial term.

³⁵ On December 21, 2007, PG&E filed an application with the CPUC seeking that approval. Although the application was protested by several Ruby competitors and other parties, both the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) supported the contract.

The CPUC Decision

The unanimous CPUC November 7, 2008 decision (which is over 120 pages in length) concluded:

...that it is in the public interest to grant PG&E's application because (1) PG&E has a need to diversify away from its heavy reliance on declining Canadian gas supplies, and (2) the proposed Ruby Pipeline transportation arrangements provide a reasonable and cost-effective means for doing so.³⁶

The CPUC decision found that western Canadian gas supplies – which have historically provided the majority of PG&E's supply – are in decline (a point not reasonably contested by any party). The decision recites that, in a series of orders over the past several years, the CPUC has supported efforts by the California utilities to diversify their gas supply portfolios and to hold amounts of interstate pipeline capacity to each of the major gas supply basins. In addition to the decline in western Canadian supplies, the decision noted that gas usage within Canada was increasing, resulting in a significant forecasted decline in supplies available for export to the United States. Thus, the central question was essentially not *whether* PG&E should diversify its supplies, but *how* PG&E should best diversify its supplies.

The major alternative to PG&E obtaining transportation capacity on Ruby was for it to take capacity on the proposed Sunstone Pipeline Project, sponsored by Gas Transmission Northwest Corporation ("GTN") and Williams Gas Pipeline Company, LLC ("Williams"). Sunstone, like Ruby, would also transport gas in a westerly direction from Opal, Wyoming. Sunstone, however, was proposed to end at an interconnection with GTN's pipeline system near Stanfield, Oregon, rather than 335 miles to the south at the Malin interconnect, as is the case with Ruby. As a result, potential Sunstone shippers desiring to transport gas from Stanfield south to Malin would need to use the GTN pipeline, resulting in rate stacking on multiple pipelines. Sunstone and its partners vigorously contested the Ruby/PG&E agreements in the CPUC proceeding.

³⁶ D.08-11-032, Decision Approving Gas Transportation Arrangements, p. 3.

Notwithstanding this intense competitor opposition, the CPUC found that Ruby “is a better alternative than Sunstone for accessing Rocky Mountain gas supplies.”³⁷ In particular, the decision concluded that Ruby was “clearly superior in terms of transportation costs.”³⁸ The CPUC found that the Sunstone sponsors had never offered PG&E a rate equal to or superior to the rate provided by Ruby despite having ample opportunity to do so. The CPUC also concluded that Ruby had other advantages over Sunstone. First, Ruby offered greater reliability than Sunstone because Ruby will deliver gas at Malin and thus does not depend on service on the GTN system. The CPUC observed:

If there is an outage on GTN, gas supplies from the Rockies will continue to flow on Ruby. If there is an outage on Ruby, gas supplies from the WCSB will continue to flow on GTN. The added reliability provided by Ruby is a significant advantage given California’s heavy reliance on gas for electric generation and winter heating.³⁹

Second, the CPUC concluded that Ruby will provide more gas-on-gas competition at Malin.

That is because all of Ruby’s capacity (i.e., 1.5 Bcf/d) will flow to Malin, whereas only a portion of Sunstone’s capacity of 1.2 Bcf/d will flow to Malin, with the remainder going to the Pacific Northwest. The increased gas-on-gas competition provided by Ruby should be more effective at reducing gas prices in California compared to Sunstone, all else being equal.⁴⁰

The CPUC’s decision considered and rejected all of the arguments raised by GTN, Williams and the two other project opponents.⁴¹ In response to the CPUC November 7, 2008 decision, GTN has filed an Application for Rehearing of the decision, which is pending. However, under the CPUC’s rules, the decision is not

³⁷ D.08-11-032, p. 31.

³⁸ *Id.*, p. 32.

³⁹ *Id.*, p. 33.

⁴⁰ *Id.*, pp. 33-34. The forecasted reduction in prices at Malin was estimated to represent savings of hundreds of millions of dollars to PG&E’s ratepayers. *Id.*, p. 34, fn. 28.

⁴¹ In addition to GTN and Williams, Southern California Gas Company/San Diego Gas and Electric Company and a private individual filed comments opposing the PG&E/Ruby contract.

stayed pending rehearing and thus is in full force and effect.

V.

DESCRIPTION OF FACILITIES

The Ruby Pipeline Project will consist of the following facilities:

- approximately 675.2 miles of 42-inch-diameter natural gas pipeline;
- an approximate 2.6 miles of 42-inch-diameter natural gas pipeline lateral;
- four compressor stations; and
- eight interconnects proposed initially (with two potential interconnects in the future) all located within four measurement facilities.

Compressor Design

The design of the Project requires four compressor stations with one station located at the starting point (the "head station") and the remaining three stations essentially located at each one-quarter point along the distance of the pipeline. The head station facility, referred to as the Roberson Creek Compressor Station, would be an electric-motor driven facility located near the Opal Hub in Lincoln County, Wyoming. The remaining stations are proposed to be natural gas-driven turbine stations. The Wildcat Hills Compressor Station would be a located at roughly the one-quarter point distance in Box Elder County, Utah. The Wieland Flat Compressor Station would be the mid-point station located in Elko County, Nevada. The three-quarter point station would be the Desert Valley Compressor Station, located in Humboldt County, Nevada. If Ruby opts to delay or eliminate a compressor station from its design as discussed above, it is expected that the Desert Valley Compressor Station would be the affected station.

Interconnecting Measurement Facilities

Ruby is proposing initially to install eight interconnects within four separate measurement stations. There would be four receipt metering facilities that would permit receipts of gas from CIG, Enterprise Products Partners, L.P., Williams Energy Services, and Overthrust Pipeline Company. Currently, Ruby is proposing four delivery metering facilities to interconnect with PG&E, Paiute Pipeline Company, Tuscarora Gas Transmission Company and GTN. The first measurement station would be installed within CIG's existing King Compressor Station covering the interconnects with CIG, Enterprise Products Partners, L.P. and Williams Energy Services. The second measurement station would be installed within the newly proposed Roberson Creek Compressor Station (covering the interconnect with Overthrust Pipeline Company). The remaining two measurement stations would be installed within their own 500-by-500 foot sites located in Humboldt County, Nevada (interconnect with Paiute Pipeline Company) and Klamath County, Oregon (interconnect with GTN, PG&E and Tuscarora Gas Transmission Company).

VI.

GREENHOUSE GAS INITIATIVES

In response to growing concerns regarding the impact of Greenhouse Gases ("GHG"), Ruby was developed and designed to be carbon-neutral, both during the construction phase and also during the future operations. Ruby has reviewed multiple construction and operations options after carefully considering the proposed scope of the Project, geography, and maturity of the GHG mitigation technologies. Since there is no single solution to mitigating all GHG emissions, Ruby will adopt a "portfolio" approach to mitigate carbon emissions. Ruby will, as applicable, incorporate several design and operating considerations into the Project in order to reduce total GHG emissions. These considerations include: the application of internal pipeline coating to improve hydraulic efficiency; use of electric compression at the head station, implementation of best management practices to reduce fugitive methane emissions, reforestation, and the application of the US Green Building Council Leadership in Energy and Environmental Design ("LEED") criteria for

buildings. Ruby also plans to purchase emission offset credits, renewable energy credits, or similar options to mitigate the remaining emissions generated during the operation of the facilities. Ruby believes that its commitment to minimizing its GHG footprint will serve as a source of competitive advantage in a carbon-constrained economy and will set a high standard for environmental stewardship and responsibility, consistent with Ruby's core corporate values. When handing down its favorable decision approving PG&E's transmission commitments, the CPUC cited Ruby's lower GHG footprint relative to other competing pipeline projects as particularly advantageous for California citizens. Ruby will recover the operations cost of certain of these initiatives in its rates through an Electric Power Cost ("EPC") charge. A more detailed discussion of this proposed charge is provided in Ruby's tariff.⁴²

Potential Cogeneration Options

In addition to Ruby's decision to be a carbon-neutral pipeline, Ruby is also evaluating the commercial and technical viability of installing and operating waste heat electric cogeneration ("WHEC") facilities in relation to this Project.⁴³ As part of this evaluation, Ruby considered the following threshold criteria that determine the viability of WHEC equipment installation and operation.

- The first threshold that must be achieved is compressor station output. Turbine compressor stations must typically generate at least 15,000 site horsepower for a WHEC unit to reach a viable economic return.

Ruby is installing four compressor stations as part of its Project. However, the head station will consist of electric-driven compressor units. Therefore, this station is not eligible for WHEC equipment installation. The remaining three stations will all have horsepower in excess of the 15,000 site horsepower required for a WHEC equipment operation.

- The second criterion that must be achieved is a high level of annual compressor unit utilization. Since WHEC facilities are designed to generate electric power for

⁴² Refer to Sections 27 and 28 of Ruby's proposed Pro Forma Tariff.

⁴³ Ruby utilized research information published in the INGAA white paper released in February 2008 titled "Waste Energy Recovery Opportunities for Interstate Natural Gas Pipelines" for its assessment of the viability of WHEC facilities.

sale, a reliable supply of waste heat is necessary to make the project economically viable. For WHEC facilities attached to compressor stations, the most reliable and highest supply of waste heat is achieved by base-loading the compressor units.

Ruby anticipates that at least two of the three natural gas-fired compressor stations will have fairly constant and consistent operation. Given the lack of operational data, it is difficult to project which of the stations will have a high load factor for a majority of the time. However, once Ruby is placed into service and is able to accumulate operational history for each of the stations, it will evaluate the applicability of WHEC equipment at each of three natural gas-fired compressor stations.

- The third criteria is the price the electric power utility that exists in the proximity of compressor stations will charge for the power line upgrades to receive the electric power.

Based on a preliminary geographic review of such infrastructure, it appears that the three natural-gas fired compressor stations are located within a reasonable proximity of powerline infrastructure to permit further study of the costs of delivering waste heat power to the electric power grid. Only preliminary estimates of the cost for an upgraded power line and substation have been developed to date.

- The final criterion is the price that the local utility will pay for delivered power. This will determine the economic return for the WHEC project. Due to uncertainty about the other project factors, no contact has been made with the local utilities to determine their interest. However, once Ruby can review all of the other factors, contact will be initiated with the local utilities and/or developers who specialize in the construction and operation of these sorts of cogeneration facilities.

Given the Commission's general interest in the compatibility of WHEC technology with pipeline-related projects, Ruby will file a report in this docket after the first full year of operations describing its analysis of the feasibility of WHEC installations on Ruby compressor stations.

VII.

TRANSPORTATION SERVICE AGREEMENTS

Precedent Agreements

As discussed earlier, Ruby has executed PAs with a number of shippers for varying capacity and terms on the Ruby pipeline. Before construction commences, the PAs will be replaced by transportation service agreements (“TSA”) which are expected to contain the non-conforming provisions described below. Ruby will file the executed TSAs with the Commission prior to the anticipated in-service date of the facilities.

The current combined MDQ of all the PAs is approximately 1,223,000 Dth/d. All shippers identified in this application have executed negotiated rate PAs with certain contract provisions described in detail below. As shown in the table below, certain contracts have different start of service dates which ramp up or down during the 15-year contract profile. During the first year of service, subscriptions will ramp up from 785,000 Dth per day up to 1,160,000 Dth per day. In the second year of service, the subscription level increases to 1,185,000 Dth per day. In the third through the tenth year of service, the subscription level is generally 1,222,857 Dth per day.⁴⁴ This contract profile does not include any new transportation service contracts that Ruby secures in the future. As indicated earlier, Ruby’s marketing efforts are ongoing and may increase the current contract level.

The current Ruby shippers and the respective terms of their contracts are shown below:

⁴⁴ In the third through ten year time frame, contracts in the first and last months of that period is less than the 1,222,857 Dth per day based on quantities that ramp up after the first month or expire on the second to the last month of the ten year time frame.

Shipper	Term	Capacity (Dth/d)
PG&E – Core Gas Supply	Commences: 11/01/2011 (15 yrs)	250,000
PG&E – Electric Fuels Supply	Commences: 07/1/2011 -10/31/2011 and 11/1/2011(15 yrs)	250,000 125,000
Anadarko Energy Services Company	ISD* - 10 years	200,000
BP Energy Company	ISD - 10 years	95,000
<i>Shipper A</i>	<i>ISD - 10 years</i>	<i>200,000</i>
Shell Energy North America (US), L.P.	ISD - 10 years	75,000
Bill Barrett Corporation	ISD - 10 years	50,000
Berry Petroleum Company	ISD - 10 years 24 months following ISD - 8 years	25,000 12,857
Marathon Oil Company	ISD - 10 years	40,000
Antero Resources Piceance Corporation	ISD - 10 years	25,000
Occidental Energy Marketing, Inc.	ISD - 10 years	50,000
Shell Energy North America (US), L.P.	4/1/2012 – 3/31/2013 4/1/2013 – 2/28/2021	25,000 50,000
Nexen Marketing U.S.A. Inc. ⁴⁵	5 years	25,000
El Paso Marketing, L.P.	60 months past ISD - 5 years	25,000
*ISD = First day of the month following the in-service date		

As noted in the table above, Shipper A's name has been redacted. Currently, 125,000 Dth per day of the 200,000 Dth per day that is conditionally contracted to this shipper is subject to its board of directors' approval. Ruby will file this contract with the Commission as soon as this shipper obtains its board approval.

Those shippers executing PAs with renewal rights after the initial term of the agreement are referred to in Ruby's Tariff and within this application as Initial Shippers. PG&E is the only shipper with a contract term and MDQ that qualified it for anchor shipper rate treatment, as discussed below.

⁴⁵ Two shippers, Nexen Marketing U.S.A. Inc. ("Nexen") and El Paso Marketing, LP, have executed complementary PAs for five years, consecutively, at a contract quantity of 25,000 Dth/d.

Negotiated Rates

During the open season process, Ruby offered all shippers the opportunity to choose a recourse rate as the contract rate. Recognizing that the recourse rate would not be confirmed until the Commission's issuance of an order and that the recourse rate could change over the contract life through Section 4 rate proceedings, shippers were given the option to choose between the recourse rate and a negotiated rate. All of the shippers who have executed PA for capacity as of the date of this filing elected the certainty of a specified, negotiated rate that would be applicable for the entire term of the contract. All of the negotiated rates are less than the proposed initial recourse rate and are fixed rates for the terms of the agreements. Ruby was willing to accept the risk associated with the granting of the negotiated rates for long-term firm agreements with the Initial Shippers on this Project in exchange for the certainty and stability that such long-term fixed rate agreements provide.

Negotiated rate tariff provisions are set forth in Section 33 of the General Terms and Conditions of the pro forma tariff submitted under Exhibit P. For any negotiated rate transaction, the Tariff provisions require Ruby to file with the Commission either its negotiated rate agreement or a tariff sheet stating the shipper name, the rate schedule, the negotiated rate, the receipt and delivery points, and the contract quantities. The Ruby rate schedules set forth in the Tariff each provide that the ACA surcharge,⁴⁶ the applicable fuel use and lost and unaccounted for gas reimbursement in-kind and the EPC charge will apply to all negotiated rate shippers. In accordance with the Commission's policy, Ruby will keep separate and identifiable accounts for any quantities transported, billing determinants, rate components, surcharges, and revenue associated with its negotiated rates in sufficient detail that they can be identified in Statements G, I, and J, as necessary in any future NGA Section 4 or 5 rate case.

⁴⁶ The ACA surcharge will not apply until the Commission bills Ruby the annual charge. This typically occurs one calendar year after the facilities are placed into service.

Revenue Sharing

As a part of the negotiation of the underlying PAs, Ruby has agreed to share short-term firm and interruptible revenues with its firm recourse rate shippers and with most negotiated rate shippers once Ruby has secured long-term firm subscriptions equal to the initial design capacity of the pipeline. This sharing provision appears in Section 36.1 of the Ruby Tariff. The sharing is subject to a two-part test to determine whether there are any “excess” revenues to be so credited: first, it is determined whether Ruby has recovered its cost of service and, second, if the cost of service is fully recovered, the short-term firm and interruptible revenues must be greater than the cost allocated to these services. If both conditions are met, Ruby will share 50 percent of a pro rata allocation of the share of these “excess” revenues received from interruptible and short-term firm transportation service (e.g. excess over cost of service and allocated costs) with recourse rate shippers. Ruby will also credit those negotiated rates shippers who have this right specified in the negotiated rate provisions of their PA or TSA.

Future Negotiated Rate Adjustment

Ruby has negotiated a provision with shippers that will recalculate the negotiated rate based on a computation on base rate and fuel charge (both gas and electric) in the event a future expansion raises the gas fuel and electric charge above a threshold level. This provides shippers with a level of certainty that the overall cost to the shipper (base rate and gas fuel and electric power) will not be unduly increased due to other expansion activities. Those shippers who have negotiated this provision will have their negotiated rate lowered by the dollar equivalent of the difference in the amount of the initially approved total fuel charge or 1.1 percent (whichever is greater) and the fuel charge resulting from the expansion. For purposes of this comparison, the electric power usage at the head station will be converted to a natural gas volume. The gas value used in making this negotiated rate change computation will be determined by using the average of the forecasted monthly price of gas at the Opal Hub for the 60 months following the close of the open season for the expansion.

Shippers on Ruby elected the certainty of a specified, negotiated rate that would be applicable for the entire term of the contract. In doing so, the shippers were able to better gauge their own financial exposure and at the same time provide Ruby with the financial certainty that allows this Project to move forward. This provision simply extends the same degree of certainty to the combined base rate and fuel charge that is provided to the shipper on negotiated rate reservation charges. The provision also ensures that existing shippers will not be asked to subsidize the rates, including fuel rates, of future shippers participating in an expansion and is consistent with the Commission's construction policies that consider whether a project can proceed without subsidies from existing customers.

Potential Non-Conforming Provisions

Ruby notes that PAs with the shippers identified in this application contain potential non-conforming provisions but Ruby strongly believes none of the provisions constitute an impermissible material deviation. The non-conforming provisions in the PAs reflect the unique circumstances involved with securing the financial commitment necessary to support Ruby's development and construction of new infrastructure. Likewise, the provisions provide the shippers with the contract incentives necessary to make a binding commitment to the Project. The open seasons offered similar contract provisions to all interested parties. These provisions will be transferred to the TSAs when the TSAs supersede the PAs. While Ruby will file the executed, non-conforming TSAs, prior to placing the facilities in service as typically required by the Commission in its orders authorizing expansion projects, Ruby specifically requests that the Commission approve the PAs and the discussed non-conforming provisions in its PD and final order. Pursuant to the Commission's findings in *Guardian Pipeline, L.L.C.*,⁴⁷ Ruby will file a sample unexecuted TSA that includes a redlined version of the non-conforming provisions for the Commission's review or Ruby will submit the executed TSAs within 60 days of submitting an application in this docket.

⁴⁷ See *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259 at P 33 (2007).

Additionally, the PAs contain unique pre-construction requirements that will be eliminated prior to the in-service date of the facilities (i.e., state commission approval, favorable certificate order from the Commission, etc.). Since those provisions will be removed prior to placing the facilities in service, the provisions are not discussed here.

Renewal Rights

The shippers supporting the Project have negotiated varying renewal rights in their PAs. The shippers have a standard contract term rollover provision providing a one-time unilateral right to extend the term of the TSA for five years.⁴⁸ The unilateral term extension gives the Initial Shippers the ability to renew their contracts at the existing negotiated rate if they still need the capacity at the end of the initial contract term. This contract option was provided to the Initial Shippers as a part of and to secure their support for the Project. Additionally, PG&E has evergreen rights extending through 2036.

Most Favored Nation Provision

The PAs for the shippers supporting the Project provide a "most favored nation" provision should any future shipper execute an agreement with Ruby for equivalent transportation service [e.g., firm service or service from the same or generally equivalent receipt point(s) to the same or generally equivalent delivery point(s)]. Under this provision, if the transportation rate offered to a future shipper is less than the contracted-for rate (or certain other identified rates for longer contracts), Ruby will be required to reduce the rate for the shippers supporting the Project to match the lower rate offered to the future shipper. Ruby has negotiated this provision with the shippers in recognition of the substantial business risk these shippers have taken on as supporters of the Project. This provision is consistent

⁴⁸ Section 20.3 of Ruby's pro forma tariff allows Transporter and Shipper to mutually agree to an evergreen, renewal, or rollover that would extend the primary term of the TSA. However, Ruby highlights the renewal rights provided in the PAs here, since the tariff provision is not yet in effect.

with other proceedings where the Commission has permitted anchor shippers to hold most favored nation contract provisions in return for their support of a project.⁴⁹

Maximum Daily Quantity Reduction

One shipper (PG&E) has negotiated the option to reduce its maximum daily quantity (“MDQ”) after approximately 11 years of service. This provision was offered to all shippers willing to enter into contracts for terms of 15 years or more during the initial open season. However, PG&E was the only shipper to do so. The contract option gives PG&E the ability to step down its rights over the last four years of the contract if it no longer has the need for the full contract capacity. Starting on the 11th anniversary and each anniversary thereafter, the Core Gas Supply function and the Electric Fuels function will each have the option to reduce their respective capacity as follows: down to 80 percent of the originally contracted capacity on the 11th anniversary; 60 percent on the 12th anniversary; 40 percent on the 13th anniversary; 20 percent on the 14th anniversary; and down to 0 percent on the 15th anniversary. This provision is consistent with other proceedings where the Commission has permitted expansion shippers to hold step-down rights at the end of the initial contract terms.⁵⁰

Creditworthiness

The Commission’s Creditworthiness Policy Statement requires pipelines to establish and use objective criteria for determining creditworthiness.⁵¹ Ruby has defined objective and transparent creditworthiness provisions for all shippers in Section 25 of the pro forma tariff. These provisions propose to determine the amount of credit extended to creditworthy customers based on each customer’s

⁴⁹ See *Wyoming Interstate Company, Ltd.*, letter order dated October 29, 2007 in Docket No. RP08-5-000.

⁵⁰ See *Wyoming Interstate Company, Ltd.* order issued October 18, 2007; Docket No. CP07-395 (121 FERC ¶ 61,054); *Guardian Pipeline, L.L.C.* order issued December 14, 2007, Docket No. CP07-8-000 (121 FERC ¶ 61,259); and *Guardian Pipeline, L.L.C.* letter order dated August 15, 2008 in Docket No. RP08-200-001.

⁵¹ See *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement) P 10.

credit rating. Consistent with Commission policy, this will provide Ruby a clear and consistent measure for applying credit reviews.⁵² In addition to those generally applicable provisions, the current negotiated rate shippers have agreed to additional creditworthiness contract provisions as discussed below.

Ruby's shippers are required to maintain sufficient evidence of satisfaction of creditworthiness throughout the terms of the PA and the TSA. At Ruby's request, all shippers may be required to provide a demonstration that: 1) shipper's senior unsecured debt securities are rated at least BBB- by Standard and Poor's Corporation ("S&P") and/or Baa3 by Moody's Investor Service ("Moody's") or shipper's long-term issuer rating is at least A- by S&P and/or A3 by Moody's (in the event shipper is rated by both agencies, the lowest rating will be used); 2) shipper is not under review for possible downgrade by S&P or Moody's; and 3) a sum or 12 months of anticipated reservation charges is less than 10 percent of shipper's tangible net worth.

Furthermore, the Commission has previously recognized that for new construction projects, pipelines need sufficient financial assurances from expansion shippers to ensure, prior to the investment of significant resources in the project, it can protect the financial commitment to the project.⁵³ The Commission has recognized the collateral requirements for expansion shippers that cause a pipeline to be built need to be higher than the requirements for other shippers that use the facilities after the project is placed in service.⁵⁴ In recognition of the financial reliance by Ruby on its Initial Shippers in the construction and operation of the project, Ruby

⁵² See *Arlington Storage Company, LLC*, 125 FERC ¶61,306, at P 84 (2008); *Leaf River Energy Center, LLC*, 125 FERC ¶61,131 at P 67 (2008).

⁵³ See, for example, *Midwestern Gas Transmission Company*, 114 FERC ¶ 61,257, at P 50 (2006); *PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶61,382 at P 23 (2003); *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding* (Policy Statement on Creditworthiness), *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶31,191 at P17 (June 30, 2005).

⁵⁴ See, for example, *Southeast Supply Header, LLC and Southern Natural Gas Company*, 119 FERC ¶ 61,153, at P 43 (2007).

has requested a higher threshold in the PAs for the shippers supporting construction of the Project.⁵⁵

The higher credit support for the shippers identified in this application requires, in the event the shipper is not rated by S&P or Moody's, that shipper must demonstrate that 60 months of reservation charges are less than 10 percent of the shipper's net worth or that shipper has a debt/EBIT ratio of less than 3 percent and that the sum of 48 months of anticipated charges is less than 10 percent of shipper's net worth and must demonstrate that the shipper's credit and financial history and outlook are acceptable to Ruby. Ruby will base such evaluation on, among other things, financial statements, trend analyses, bank and trade references, shipper's payment history, and shipper's involvement in current or past legal proceedings.

As an alternative, the shippers identified in this Application may satisfy their creditworthiness requirements by providing and maintaining, at their option: 1) an irrevocable, unconditional guarantee acceptable to Ruby issued by another person or entity which satisfies the creditworthiness standards described above; 2) a cash deposit or an irrevocable letter of credit acceptable to Transporter equal to three years of the anticipated charges; or 3) such other credit arrangements which are mutually agreed to by Ruby and shipper and which are accepted by Ruby on a non-discriminatory basis. To accommodate the needs of certain shippers, Ruby has agreed to accept a cash deposit or an irrevocable letter of credit equal to just 12 months of anticipated reservation charges from small shippers (i.e., shippers contracting for 25,000 Dth per day or less). The Commission has recognized the risk of construction, and consequently the need for collateral, can be minimized to the extent the pipeline is able to remarket the capacity in the event of a shipper default.⁵⁶ The smaller shippers on the Ruby pipeline pose less of a risk for

⁵⁵ See *Natural Gas Pipeline Company of America*, 118 FERC ¶61,211 at P 52 (2007) (accepting a 42 month collateral requirement for anchor shippers but requiring three months for all other shippers).

⁵⁶ The Commission has recognized the pipeline's need to exercise discretion when determining collateral requirements; see *Calpine Energy Services, L.P. v. Southern Natural Gas Company*, 103 FERC ¶ 61,273 at P 31 (2003).

remarketing their capacity and, hence, need less collateral than the much larger shippers on the Project. At this time, the only small shipper that is required to provide credit equal to 12 months of anticipated reservation charges is Antero Resources Piceance Corporation.

Ruby's decision to proceed with development of this Project and to spend nearly \$3 billion of construction capital was based, in significant part, on these credit requirements and the resulting added level of security. The credit requirements are justified based on Ruby's need for credit security to proceed with the Project. Ruby requests the Commission review these potential non-conforming provisions and accept them as permissible contract provisions in its PD and final order addressing this application. The provisions were available to all eligible shippers and are necessary to support the construction of the Project.

PG&E Anchor Shipper Rate

PG&E has executed a PA for a combined 375,000 Dth per day for a term of approximately 15 years. As outlined in the open seasons for capacity on Ruby, all shippers were given the option to choose either a recourse rate or a negotiated rate and were given the option of subscribing for capacity for longer terms and greater quantities at a reduced negotiated rate. PG&E was the only shipper to execute a contract at the quantity and term to qualify for Anchor Shipper rates. Therefore, PG&E is the only shipper granted the reduced negotiated rate associated with the "Anchor Shipper" rate status referenced in PG&E's PA.⁵⁷ After the execution of the PG&E PA and before the execution of other PAs, Ruby experienced a significant increase in the cost of raw materials and contractors. The cost increases forced Ruby to increase its estimated rates to reflect the higher known and projected costs. Had other shippers contractually committed at the same date as PG&E, Ruby could have secured construction and materials commitments before the period of steel and materials "hyperinflation" commenced. PG&E will pay Ruby a negotiated rate of

\$0.68 per Dth, as compared with the other shippers paying rates in the range of \$0.88 to \$0.95 per Dth. Both rates are stated for ease of comparison in daily equivalent 100 percent load factor rates but will be invoiced as two-part straight-fixed variable type rates.

Tariff

Ruby has prepared and attached as Exhibit P a proposed FERC Gas Tariff, Original Volume No. 1. The pro forma tariff contains several provisions that are integral to Ruby's participation in the Project. These provisions are discussed in detail in the Affidavit of Mr. Richard Derryberry attached under Exhibit P. Ruby requests the Commission examine the subject tariff provisions as a part of its initial review of the certificate application and accept the respective provisions in its PD. Ruby is supportive of a technical conference if the Commission believes such a mechanism could help clarify policy, improve text, and/or resolve any disputes.

Ruby proposes to offer two basic firm and interruptible transportation services, as well as a parking and lending service and an interruptible operator swing service. These services are:

1. Rate Schedule FT (Firm Transportation Service). The FT service will consist of firm transportation service requiring ratable hourly flow rate from all receipt points to all delivery points on the Ruby system.
2. Rate Schedule IT (Interruptible Transportation Service). The IT service will consist of interruptible transportation service requiring ratable hourly flow rate applicable from all receipt points to all delivery points on the Ruby system.
3. Rate Schedule PAL (Interruptible Parking and Lending Service). PAL service provides interruptible short-term parking and lending of gas. Shippers must use a separate firm or interruptible transportation contract to move to or from the point where gas is parked or loaned.
4. Rate Schedule SS-1 (Interruptible Operator Swing Service). Rate Schedule SS-1 is an interruptible swing service that will be offered to delivery point operators to accommodate hourly variations in end-use requirements.

⁵⁷ This rate treatment is consistent with the Commission's foundation shipper policy. See *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, October 31, 2006, Docket No. RM06-7-000; 18 CFR 157, 71 FR 63680.

The Tariff has been prepared in conformance with the requirements of Part 154 of the Commission's Regulations under the NGA and contains proposed rates, rate schedules, general terms and conditions, and forms of service agreements. In compliance with Order Nos. 636, Order No. 637, and other recent orders, the Tariff provides for an electronic bulletin board, a capacity release program, flexible receipt and delivery point rights, the right-of-first refusal on long-term maximum rate contracts, negotiated rate authority, discount rate authority, and incorporation of North American Energy Standards Board ("NAESB") standards. Ruby will file its required Standards of Conduct pursuant to Part 161 of the Regulations and Order No. 717. Ruby will implement the Order No. 717 requirements upon the in-service date of the Project.⁵⁸ Finally, Ruby will update its Tariff to comply with any subsequent Commission orders or clarifications occurring between this filing and compliance with the Commission's order in this proceeding and will submit actual tariff sheets to coincide with the anticipated in-service date of the facilities.

Ruby has primarily based its tariff on Cheyenne Plains Gas Pipeline Company, L.L.C.'s tariff with some substantive differences. In order to facilitate the Commission's review of the tariff, Ruby is providing an overview as an attachment to Mr. Derryberry's testimony in Exhibit P, which references the substantive differences.

In accordance with Order No. 634-A in Docket No. RM02-14-000, which requires Commission-regulated entities, among other things, to file their cash management agreements, Ruby is providing in Exhibit Z-1 its cash management agreement that is currently in place between Ruby Pipeline, L.L.C. and El Paso Ruby Holding Company, L.L.C.

⁵⁸ See *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (October 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), 125 FERC ¶ 61,064 (2008).

IX.

COST OF SERVICE AND RATES

Total Cost of Service

The total cost of service for the Ruby Pipeline Project at the time of in-service is projected to be \$574,905,154 as detailed in Exhibit N attached hereto and summarized on Page 1 of 7 of that exhibit. This cost of service is based in large part on the total gas plant in service of \$2,963,027,212 as detailed in Exhibit K included herewith. Various elements of the projected cost of service are described below and in the explanatory statement provided in Exhibit N.

Capital Structure and Rate of Return

Ruby anticipates that 40 percent of the initial Ruby Project costs will be funded with equity and the remaining 60 percent with commercial bank and/or capital market debt. The cost of service of \$574,905,154 is based on (1) an overall return on equity at 14.0 percent; (2) a 9.3 percent cost of debt;⁵⁹ (3) a Federal and State effective income tax rate of 36.44 percent; and (4) a straight-line depreciation rate of 2.86 percent which reflects a 35-year useful life. Ruby's proposed capital structure, return on equity, and debt result in an overall pre-tax return of 14.40 percent and are consistent with recent Commission orders on major construction projects.

Requested Return on Equity

Ruby is requesting a 14 percent return on equity in determining its overall cost of capital. This equity return recognizes the relative risks associated with a greenfield project and assumed by Ruby. Further, in determining the requested equity return, Ruby reviewed the allowed returns the Commission has granted in major construction projects and new pipeline development,⁶⁰ with particular emphasis on the indicated basis differential between the cost of long-term debt and

⁵⁹ A detailed explanation of the cost of debt and financing is included herewith as part of Exhibit L.

⁶⁰ See, for example, MarkWest Pioneer, L.L.C., 125 FERC ¶ 61,165 (2008) at Paragraph 27 and Mid-Atlantic Express, LLC, 126 FERC ¶ 61,019 (2009) at Paragraph 31 approving a 14 percent return on equity for a new pipeline entity.

the cost of equity. Ruby believes the 14 percent return is a conservative request for the equity return for this project, especially in light of today's uncertain and difficult capital market environment.⁶¹

Cost of Debt

Ruby anticipates its computed cost of debt as 9.3 percent based on current market conditions. Ruby's financing plans are discussed in greater detail in the financing summary below and in the financing exhibit of this application. Ruby anticipates the 9.3 percent debt cost will be the cost of a construction related debt instrument drawn down during the staging and construction phase of the project following the certificate approval in this docket and that it will be equal to approximately 60 percent of its in-service investment. (The 9.3 percent rate reflects the expected coupon rate of such debt and amortization of the issuance costs of the debt over the initial maximum term of the expected initial debt instrument). Ruby would anticipate transitioning from the construction financing to longer-term debt with less restrictive covenants sometime during 1-5 years following the in-service date. Nonetheless, Ruby anticipates that its debt cost as of the effectiveness of the initial recourse rates proposed here will be the 9.3 percent and that such debt cost should be used for such initial rate computations and also for use in the allowance for funds used during construction ("AFUDC") computation.

Allowance for Funds Used During Construction

Ruby requests the PD specifically address Ruby's proposed treatment for AFUDC application and computation. Ruby asks the Commission to approve the AFUDC rate to be used in the monthly accounting books and records throughout the development and construction period.

⁶¹ See "Financial Crisis Casting 'Broad Negative Shadow' Over Midstream Sector." Foster Natural Gas Report No. 2725. December 19, 2008. p 8 (citing a research report by Fitch Research entitled 'Pipeline/Midstream/MLP 2009 Outlook; Time For Companies to Play Defense'. The research report's projections that 2009 will continue to present challenges for all MLPs and predicts a weakening of credit metrics as capital becomes scarce and the increased cost of capital erodes returns on growth projects.). See *also*, Jack Healy, "Cost of Borrowing Zooms Up for Corporations," N.Y. Times, January 19, 2009 at B1.

Ruby has been recording AFUDC on its project capitalized expenditures since June 2007 when the El Paso Corporation Executive Committee authorized the expenditure of initial Ruby Project costs. While Ruby did not formally file its PF docket until January 2008, Ruby had several preliminary pre-filing informal discussions with Commission Staff, as well as other federal and state permitting agencies, prior to that date. Moreover, the Ruby/PGE PA was filed at the CPUC on December 21, 2007, and was preceded by months of project development work necessary to obtain PGE's commitment to the Project.

To determine the AFUDC rate, Ruby asks Commission approval to apply one continuous AFUDC rate to be applicable throughout the project development and construction period. This rate would be based on the capital structure, return on equity, and debt cost described above in calculating the Project's initial cost of service even though Ruby has been contributing 100 percent equity funds to date and does not anticipate construction financing until the Commission certification is received in about January 2010. Ruby believes the requested AFUDC rate is appropriate for Ruby, its project sponsors and its shippers. Ruby expects to have stand-alone construction financing executed as soon as the regulatory process and capital markets allow.

Requested Depreciation Rate

Ruby requests approval to depreciate its gas transmission plant using a 2.86 percent straight-line depreciation rate for accounting purposes. Such depreciation rate was based on a 35-year useful life. The 35-year useful life was determined with heavy emphasis on relative gas supply for this project.⁶² Ruby reviewed physical, technical, supply and market obsolescence in determining the appropriate useful life. Ruby will also use the 2.86 percent rate for depreciation and amortization of general

⁶² The Rocky Mountain supply life exceeds 35 years but Ruby has used truncated supply life consistent with Commission policy. See the Exhibit N explanatory statement for additional details.

and intangible plant items. Ruby has also reflected the 2.86 percent depreciation rate in its cost of service computations as detailed in Exhibit N.

Development of Recourse Rates

As detailed above, Ruby Pipeline proposes to offer one firm service under Rate Schedule FT and three interruptible services under Rates Schedules IT, PAL, and SS-1.

The maximum recourse rate for service under Rate Schedule FT has been developed using the net cost of service, after the total cost of service has been reduced for a cost of service credit related to interruptible services. The derivation of the Rate Schedule FT rate is shown on Page 6 of 7 of Exhibit N. As shown in that Exhibit and further explained in the Explanatory Statement of that exhibit, Ruby proposes that the initial maximum recourse rate for firm transportation service under Rate Schedule FT will be a monthly reservation rate of \$30.9980 per Dth and an initial commodity charge of \$0.0105 per Dth delivered. Ruby requests the minimum recourse Rate Schedule FT rate to be equal to anticipated variable costs and proposes a \$.00 Dth per day reservation minimum rate and \$.0105 minimum commodity rate.

The maximum recourse rate for service under Rate Schedule IT has been developed based on a 100 percent load factor rate equivalent of the Rate Schedule FT rate. The derivation of the Rate Schedule IT rate is shown on Page 6 of 7 of Exhibit N. As shown in that exhibit and as further explained in the Exhibit N Explanatory Statement, Ruby proposes that the initial maximum recourse rate for interruptible transportation service under Rate Schedule IT will be a commodity rate of \$1.0296 per Dth delivered. The minimum recourse rate for Rate Schedule IT is proposed to be \$.0105 per Dth delivered. As has been generally allowed in many pipeline cases, the maximum recourse rates for service under Rate Schedules PAL and SS-1 are equivalent to the maximum recourse rate under Rate Schedule IT, as shown on Page 6 of 7 of Exhibit N.

Ruby is providing under Exhibit N a detailed cost-of-service and an explanatory statement explaining and supporting the rate cost of service, allocation, and derivation for these rate schedules.

Long-term/Short-term Rates

While Ruby believes it is appropriate to differentiate between long term and short term firm and interruptible transportation rates, particularly when a pipeline has an open capacity position, Ruby is continuing its marketing efforts at this time and is uncertain of the firm contract subscriptions it will have in place as of the in-service date of the requested facilities. Thus, Ruby may file a future rate change under Section 4 of the NGA if Ruby believes such term differentiated rates are appropriate for its system at that time.

Projected Fuel Usage and Electric Power Cost Surcharge

For fuel gas used in the three gas compressor stations and for other operational utility gas fuel uses, Ruby will retain fuel gas and lost and unaccounted for (“L&U”) gas in kind pursuant to Section 26 of the General Terms and Conditions of the pro forma tariff being submitted under Exhibit P. The initial fuel retention percentage is projected to be 0.552 percent as derived on Page 7 of 7 of Exhibit N and shown on Line 7 of that exhibit. The initial L&U is assumed to be 0.15 percent, for a total Fuel and L&U retention percentage of 0.702 percent. The fuel in-kind recovery tariff mechanism provides for a quarterly update filing, and a volumetric true-up mechanism.

As is more fully discussed in the Affidavit of Mr. Derryberry, all shippers also will be charged each month an electric power costs charge (“EPC”) associated with the operation of the electric drive head compression station and any system costs arising from mitigation of greenhouse gas emissions. During periods in which mitigation costs associated with GHG are completely voluntary, Ruby has agreed to

limit the one year recovery of such costs to \$12.5 million each annual period following the in-service date of the facilities. The EPC tariff provisions are set forth in Section 27 of the General Terms and Conditions of the pro forma tariff being submitted under Exhibit P. The projected initial EPC surcharge is equal to approximately \$23 million annually as shown on Exhibit N, Page 7 of 7.

ACA Surcharges

Ruby will file a future tariff filing to institute an ACA surcharge which will be charged to all shippers. Ruby anticipates making such a filing coincident with the Commission's first invoices to Ruby for such amounts.

Financing of Project

Ruby expects to finance the Project on a non-recourse or so-called project financed basis, such that the capital structure of the project reflects a 60 percent to 40 percent debt to equity ratio. The goal is to put in place a debt financing as soon as possible that will allow Ruby to borrow over time to pay for construction costs as they are incurred, and which will be fully drawn at or near the estimated completion date. The equity contributions to the Project will be made either prior to the debt funding or in pro-rata amounts along with debt funding of the Project. Anticipating the desire to use project financing arrangements, most of the Ruby PAs executed to date have provisions that require cooperation in the financing process by the countersigning party.

Ruby anticipates that it will secure construction financing from a combination of sources, which will become available to Ruby upon certain conditions being satisfied. One such condition is the issuance of the Commission's final certificate authorization. Such construction financing may have the ability to convert into a term loan(s). The terms and conditions of such financing will depend on the applicable market conditions at the time the debt facility is established. It is estimated that the construction debt will bear 9 percent coupon interest during the construction period, along with upfront financing fees and closing costs representing approximately 3

percent of the total debt commitments. Ruby's all-in cost of debt is projected here at 9.3 percent.

Based on current market conditions, it is anticipated that after Ruby is placed into service, the construction period debt may be converted into term loan commitments bearing an interest rate of approximately 8 percent, reflecting the strong credit quality of the assets, the BBB- weighted average credit rating of the shippers, and the steady cash-flow generating nature of the Project. Term loan commitments may come from the same lender group providing construction financing and/or from new lender commitments. It is anticipated that term financing will mature over varying periods up to 10 years following the in-service date, supported by revenues from Ruby's firm transportation agreements, the bulk of which have coterminous 10-year initial terms. The goal is to have the term financing with some amortization over its life, and the amortization will start following the debt instrument(s) execution.

For the purposes of Ruby's Exhibits K and N, Ruby has computed its recourse rates and its AFUDC rates using a debt cost of 9.3 percent, all as more fully described above in the Rate discussion.

Debt Financing and Preliminary Determination

Ruby has asked for a preliminary determination to allow Ruby to negotiate financing terms with lenders during 2009 so that debt can begin to be drawn down following requested Commission certification in January 2010. Since the capital markets in the U.S. are currently stressed, it is important for Ruby to have time to negotiate debt terms before certification. Such negotiations are expected to be influenced by and dependent upon approval of the commercial arrangements described in the application text and exhibits.

Ruby will file a report with the Commission in this docket once Ruby secures its construction financing commitments. If the terms of the arrangement are confidential, Ruby will update the Commission once the debt is executed.

Equity Partnerships

In order to gain the financial flexibility required to react quickly in today's challenging credit market, Ruby's parent company, El Paso, is considering the sale of a portion of the equity membership interests in Ruby. The sole purpose of Ruby is the development of the Ruby Pipeline Project. The potential equity sale contemplates El Paso Corporation selling direct membership interests in Ruby and contemplates El Paso Corporation maintaining at least a 50 percent ownership interest.

Ruby is currently discussing the potential sale of equity membership interests in the Project pursuant to confidentiality agreements. At this time, Ruby has not finalized any partnership arrangements. Should Ruby enter in any equity partnerships with potential investors, Ruby would inform the Commission of such ownership modification.

VIII.

SYSTEM CAPACITY AND OPERATIONS

The initial firm capacity of the Ruby Pipeline Project is approximately 1,484.6 MMcf per day (approximately 1,531.4 MDth per day) as illustrated in Exhibit G to this Application. This capacity represents the annual average sustainable capacity that will be available to flow from the Opal Hub to various delivery points at the Malin Hub and into the Paiute Pipeline year-round. This annual average is computed by averaging 7 months of the sustainable summer capacity and 5 months of the sustainable winter capacity. Ruby has included two flow diagrams displaying the summer and winter sustainable capacity analysis as part of Exhibit G. Additionally in Exhibit G-I, Ruby has included a flow diagram that displays the maximum capacity in

a 12 month period which for the Ruby system is a winter peak capacity measure. This peak capacity is for informational purposes only since such peak capacity is not sustainable and will instead be used only on a time-to-time optimized basis. Ruby's mainline will have a design pressure and Maximum Allowable Operating Pressure ("MAOP") of 1,000 pounds per square inch gauge ("PSIG") upstream of the Roberson Creek Compressor Station for receipt of gas at the Opal Hub. The remainder of the pipeline will have an MAOP of 1440 PSIG with an expected delivery pressure of 920 PSIG at the Malin Hub.

Ruby will operate its four compressor stations based on a number of variables including: total pipe utilization/throughput, receipt and delivery pressures and ambient air temperature. The design of the pipeline allows Ruby to file at a future date with the Commission for a compression-based expansion in order to accommodate future growth at reasonable costs and with relatively benign environmental impacts should the marketplace ever support such expansion.

The Ruby Pipeline will offer available interruptible capacity and short-term firm transportation to its shippers. As is discussed in the Rates Section herein, Ruby has allocated costs to the interruptible services.

X.

REQUEST FOR PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

As part of this application, Ruby is requesting the Commission issue PD by late July or early August 2009. Issuance of a PD will help Ruby with financing issues in today's fluctuating credit markets particularly give the size of this investment. Ruby expects it will take a number of months to negotiate financing terms. Because Ruby will have likely spent approximately 40 percent of project costs before the final certificate date, Ruby must be ready to begin drawing down debt upon certification. Thus, a PD will help support financing in a difficult credit market environment.

Ruby's shippers are also benefited by a PD. Ruby and its shippers must undertake systems programming according to Ruby's Tariff, and Ruby must have some time effectively to plan such programming. While Ruby will complete programming while the rest of the facilities are constructed, the PD will allow both Ruby and shippers time to make computer system modifications. Additionally, issuance of a PD will provide Ruby and its shippers certainty regarding the following financial, rate and tariff provisions which are integral to the Ruby Pipeline Project and are more fully discussed herein:

- (i) Negotiated rate authority (See Affidavit of Mr. Richard Derryberry under Exhibit P);
- (ii) Proposed recourse rate design and fuel rate design (See Explanatory Statement under Exhibit N);
- (iii) Authorized return on equity (See Exhibit N);
- (iv) Proposed depreciation rate (See Exhibit N);
- (v) Computation and approval of AFUDC rate (See Exhibits L and N);
- (vi) Acceptance of Ruby's proposed tariff (See Affidavit of Mr. Richard Derryberry under Exhibit P);
- (vii) The acceptance of contract provisions contained in the PAs as described in this application.

XI.

ADDITIONAL AUTHORIZATIONS

As a part of becoming an open-access natural gas transportation company, Ruby requests the Commission's authorization to perform the following activities.

Blanket Transportation Authority

In addition to a certificate of public convenience and necessity to construct and operate the Ruby Pipeline Project, Ruby requests, pursuant to Section 7 of the NGA and Section 284.221 of the Commission's Regulations, a blanket certificate of public convenience and necessity enabling it to provide open-access transportation service. In accordance with Section 284.221(b)(1)(ii), Ruby states that it will comply with Section 284.221(c), thereby subjecting its blanket certificate to the conditions of Part 284, Subpart A of the Commission's Regulations.

The granting of Ruby's request for blanket certificate authority will allow it to provide firm and interruptible open-access transportation service on a nondiscriminatory basis to all parties requesting such service consistent with the terms and conditions set forth in Ruby's pro forma FERC Gas Tariff, Original Volume No. 1, attached as Exhibit P.⁶³ Ruby proposes to provide firm and interruptible transportation service under Rate Schedules FT, IT, PAL, and SS-1 in conformance with 18 CFR Part 284, Subparts B and G. In addition, rate schedules, the general terms and conditions, and pro forma TSAs applicable to service provided under these Rate Schedules are included with this filing.

Blanket Construction/Abandonment Authority

Ruby also requests, pursuant to Section 7 of the NGA and Section 157.204 of the Commission's Regulations, a blanket certificate of public convenience and necessity authorizing, inter alia, certain construction and operation of facilities and certain amendments and abandonments under Section 7 of the NGA.⁶⁴ Ruby believes issuance of this authorization will permit expeditious responses to customer-requested facility enhancements and will serve the present and future public convenience and necessity.

Gas for System Operations

Ruby requests, pursuant to Section 7 and Sections 157, et seq., as necessary, such authorizations as may be necessary for the purchase and sale of gas as required for system operations. Day-to-day activities will require Ruby to maintain a system balance necessary for safe and efficient operations. Therefore, it may become necessary to purchase and/or sell natural gas for load balancing and line pack purposes. Ruby requests any necessary authorizations to conduct such activities.

⁶³ At such time as certificate authority is granted in this proceeding, Ruby will file its FERC Gas Tariff, Original Volume No. 1, to become effective in accordance with the applicable order.

⁶⁴ A blanket certificate issued pursuant to 18 CFR Part 157, Subpart F, authorizes the certificate holder to engage in any of the activities specified in Sections 157.208 through 157.218 of the Commission's Regulations.

Currently, Ruby neither owns nor operates any interstate pipeline facilities nor does it provide any services subject to the Commission's jurisdiction. However, upon receipt of the authorizations requested herein, the construction of the proposed facilities, and commencement of operations as proposed in this Application, Ruby will become a "natural gas company," within the meaning of the Natural Gas Act. Ruby is a newly formed company and therefore, it has no outstanding budget-type certificates issued pursuant to Section 157.7 of the Commission's Regulations.

Ruby states that it will comply with the terms, conditions and procedures specified in 18 CFR Section 157, Subpart F. Ruby requests certificate authority to own and operate facilities that will be utilized to provide open-access transportation services in accordance with the blanket certificate authority also sought in this filing. Therefore, Ruby has not submitted any sale for resale or storage service rate schedules with this Application. Since Ruby has no budget-type certificate issued under Section 157.7(d) of the Commission's Regulations for any underground storage facility, no storage field tests are ongoing under such certificate.

Operational Considerations

The Ruby Pipeline Project facilities will be operated and maintained in compliance with the Natural Gas Pipeline Safety Act of 1968, as amended, and implementing regulations contained in 49 CFR Part 192, as administered by the DOT. Those facilities will also be operated and maintained pursuant to the General Terms and Conditions of Ruby's FERC Gas Tariff.

The facilities will be constructed operated and maintained by various affiliated entities on behalf of Ruby. Ruby will execute an "Operations and Maintenance" agreement prior to the commencement of service of the Ruby facilities.

XII. POLICY STATEMENT

Summary

The Ruby Pipeline Project is consistent with the Commission's Construction Policy Statement. The Project will provide demand regions west of the Rocky Mountains with access to alternative gas supplies from Central Rocky Mountain supply basins. As a new pipeline company without any existing customers, Ruby will not rely on subsidization by existing customers and will not be subject to the "Threshold Requirement -- No Financial Subsidies" requisite in building new facilities on existing pipelines.⁶⁵ Ruby believes any impacts it may have on existing pipelines (particularly in the Malin area) are more than offset by Ruby's benefits for consumers, shippers, and public policy. Likewise, Ruby will have minimal, if any, adverse impacts on landowners and communities affected by the location of the new facilities. Accordingly, Ruby submits that the Project's significant public benefits outweigh any adverse impacts that may exist. As such, the Ruby Pipeline Project proposal is consistent with the Commission's Policy Statement.

Impact on Other Pipelines and Their Captive Customers

Ruby's proposed activities meet the criteria for issuance of a certificate under Section 7 of the NGA as described in the Commission's "Statement of Policy."⁶⁶ Under this Policy Statement, one of the criteria taken into consideration by the Commission "...is whether the project can proceed without subsidies from [the pipeline's] existing customers."⁶⁷ The purpose of the proposed Ruby Pipeline Project is to connect Central Rocky Mountain supplies to demand regions west of the

⁶⁵ See *Certification of New Interstate Natural Gas Pipeline Facilities* at Docket No. PL99-3-000, et al.; Statement of Policy, 88 FERC ¶ 61,227, 64 Fed. Reg. 51,309 (1999) ("Policy Statement"), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, 65 Fed. Reg. 7862 ("Clarifying Order"), *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094, 65 Fed. Reg. 48,236 (2000).

⁶⁶ See *Certification of New Interstate Natural Gas Pipeline Facilities* at Docket No. PL99-3-000, et al.; Statement of Policy, 88 FERC ¶ 61,227, 64 Fed. Reg. 51,309 (1999) ("Policy Statement"), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, 65 Fed. Reg. 7862 ("Clarifying Order"), *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094, 65 Fed. Reg. 48,236 (2000).

⁶⁷ See Policy Statement, 64 Fed. Reg. at 51,315.

Rockies. This is a new pipeline company with new customers subscribing to the entire pipeline capacity; there are no existing customers. Therefore, there is no possible subsidization issue present, and the Project as proposed is consistent with the Commission's directive that states, "Generally, construction of a pipeline whose rates are unsubsidized will not be considered to have an adverse effect on an existing pipeline."⁶⁸ With regard to whether Ruby has made "... efforts to eliminate or minimize any adverse effects the project might have on existing pipelines in the area and their captive customers,"⁶⁹ Ruby believes that there are minimal, if any, adverse impacts on existing pipelines in the area or their captive customers. In fact, the Ruby project should have a decidedly beneficial impact on the confluence of upstream and downstream customers and pipelines because Ruby will provide a new source of lower-priced gas supplies from the prolific and growing Rockies supply region. Currently, many customers in the Pacific Northwest and Northern California at Malin, Oregon, the terminus of the Ruby Project, must substantially depend on either GTN or Northwest Pipeline Corporation for the transportation of Canadian natural gas supplies, depending on the respective area. As noted above, those supplies, however, are projected to experience a "steep decline."⁷⁰ Since the volume of Canadian supplies is dwindling, the price of those supplies is significantly greater than is the price of supplies produced in the Rockies supply area,⁷¹ which has experienced tremendous growth and will continue to grow in the coming decades.⁷² Thus, customers at Malin, for the first time, will enjoy the benefits of supply diversity, competition between gas sellers and gas pipelines, and a significantly less expensive yet growing supply of natural gas.⁷³ They will also benefit from increased reliability by having two pipelines deliver to Malin instead of only one, giving them protection in the event of an outage on either pipeline.⁷⁴

⁶⁸ See Clarifying Order, 90 FERC at 61,397, 65 Fed. Reg. 7862, 7867 (2000).

⁶⁹ See Policy Statement, 90 FERC ¶ 61,128, 65 Fed. Reg. 7862 (2000).

⁷⁰ CPUC decision at Section 7.1.2.

⁷¹ CPUC decision at Section 7.2.2.

⁷² CPUC decision at Section 7.1.2.

⁷³ CPUC decision at Section 7.2.2.

⁷⁴ CPUC decision at Section 7.2.2.

The CPUC, which is charged with protecting California natural gas consumers, including those that obtain natural gas at Malin, has agreed with this assessment of Ruby's customer benefits.⁷⁵ As discussed elsewhere in this Application, on November 7, 2008 the CPUC issued a detailed decision approving PG&E's decision to contract for firm capacity on Ruby, over GTN's vigorous objections. The CPUC supported its decision with detailed findings regarding the numerous benefits the Ruby project will provide to consumers, including huge cost savings⁷⁶ and the need for Rockies supplies due to the "long-term decline" in Canadian supplies.⁷⁷ In addition, as the CPUC has observed, consumer advocate groups also strongly support the Ruby project.⁷⁸ Thus, the key representatives of the affected customers themselves have stated that customers will not be adversely affected, but instead will benefit from the Ruby project.⁷⁹

Although GTN has strenuously opposed the Ruby project at the CPUC and may decide to oppose Ruby's Commission certificate application as well, Ruby believes any possible impact on GTN is speculative, is the result of fair competition, and is certainly outweighed by the consumer and public policy benefits. Although PG&E has decided to turn back a portion (250 MMcf/day) of its existing firm capacity on GTN (a fact that the CPUC specifically considered in approving PG&E's contract with Ruby), under current Commission policy GTN has an obligation to attempt to remarket its unsubscribed capacity.⁸⁰ GTN also stands to benefit from Ruby's transportation of Rockies supplies to Malin, because it will have the opportunity to

⁷⁵ Cf. *Guardian Pipeline, LLC*, 91 FERC ¶ 61,285, at 61,971 (2000) (approving new project over the existing pipeline's objections, and finding the state public utilities commission was "the more appropriate regulatory entity to determine what is in the best interest of [the LDC's] customers.").

⁷⁶ CPUC decision at Sections 7.2.2 and 7.3.2.

⁷⁷ CPUC decision at Section 7.1.2.

⁷⁸ CPUC decision at Section 7.4.1 [noting the support of the consumer advocacy groups including the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and Californians for Renewable Energy (CARE)].

⁷⁹ Cf. *Guardian*, 91 FERC at 61,976 (noting that, in addition to the state PUC, the project was supported by non-profit consumer groups, including the consumer advocacy organization that represented the interests of ratepayers in utility matters).

⁸⁰ *Guardian*, 91 FERC at 61,977.

transport Rockies supplies north on its system to customers in Oregon and Washington. Ruby and GTN are discussing firm transportation options for such service. This is just one example of the remarketing opportunities available to GTN, which also serves growing consuming areas in Oregon and Washington. In fact, in recognition of the projected growth in Oregon and Washington, the projected decline in Canadian supplies, and the need for a new Rockies pipeline, GTN itself has proposed a new pipeline (Sunstone) that would also be capable of bringing new supplies to California and the Pacific Northwest.⁸¹ Although Sunstone may not go forward as a result of the choices made by shippers regarding which pipeline to support, the projected growth targeted by Sunstone could also be served with low-priced Rockies supplies delivered to GTN from Ruby, or by GTN's existing transportation services, further mitigating any impact Ruby may have on GTN.

In any event, any impact on GTN would solely result from competition, which this Commission has consistently sought to encourage for the benefit of its prime constituency, the ultimate consumers of natural gas.⁸² The Commission has previously found that any impact on an existing pipeline due to competition from a new pipeline "is competitive in nature, will provide significant long-term benefits, and should not be considered an adverse impact as contemplated by the Policy Statement."⁸³ That same conclusion applies here, particularly in view of the manifest benefits consumers stand to receive as a result of Ruby's competitive advantages, advantages which clearly outweigh any speculative adverse impact on GTN.

⁸¹ See CPUC decision at Section 7.1.2 (noting that "GTN agrees that the [Western Canadian Sedimentary Basin] will be a diminishing source of supply.").

⁸² Cf. *Guardian*, 91 FERC at 61,978 ("Any impact on ANR and its existing customers will be the result of competition, which we believe will lead to future benefits to all market participants."). The Commission has recognized that the purpose of its certificate analysis is not to protect competitors from competition. Policy Statement, 88 FERC at 61,397.

⁸³ *Guardian*, 91 FERC at 61,977.

Impact on Landowners

Ruby has identified approximately 354 landowners and land management agencies that may be affected by the Project.⁸⁴ Ruby organized an extensive public outreach plan which included contacting potentially affected landowners and agencies to address the Project's effects on their respective lands and operations. Ruby demonstrated its willingness to work with stakeholders by proactively addressing construction concerns, including reroutes where practicable. Ruby will work with individual landowners with regard to the timing associated with land cultivation and the construction of the pipeline, crop loss payments, repairs to irrigation systems and right-of-way restoration. Because agricultural uses are generally permitted on restored pipeline easements, most adverse impacts to agricultural production would be temporary or limited to the surface disturbance of the Project and would not have a substantial effect on local or regional economies. Ruby will continue to work closely with affected landowners in identifying any other potential issues of concern. Ruby land acquisition representatives are readily available to discuss such issues. Ruby has also developed a quarterly newsletter for affected landowners that provides project status updates. Further, Ruby has set up a website (<http://www.rubypipeline.com>) that is periodically updated with new information pertaining to the Ruby Pipeline Project. Based on this preliminary and ongoing work, Ruby anticipates there will be minimal adverse impacts to the affected landowners and any such impacts will be offset by the benefits discussed above.

As part of this Application, Ruby is following the landowner notification requirements promulgated by the Commission in Order Nos. 609 and 609-A.⁸⁵ Although Ruby has already commenced its stakeholder outreach program to communicate with affected landowners, Ruby will also make a good faith effort to

⁸⁴ A list of affected landowners is included in Report 1 of the Environmental Reports provided under Exhibit F-I.

⁸⁵ Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Order No. 609, Docket No. RM98-17-000, issued October 13, 1999. See FERC Stats. and Regs. Para. 31,082. Order on Rehearing, Order No. 609-A, 90 FERC Para. 61,259 (2000).

serve affected landowners [as defined in 18 C.F.R. §157.6(d) (2)] and the other parties designated in Order Nos. 609 and 609-A with a landowner notification letter within three days after the Commission issues its notice of this Application.⁸⁶ Additionally, Ruby will provide consulting and permitting agencies over 40 copies of its certificate application. The notice will contain the information prescribed by the Commission in 18 C.F.R. §157.6(d) (3). Also, within 14 days after a docket number is assigned to this filing, Ruby will twice publish a notice of the Project in daily or weekly newspapers of general circulation across the Project area. In addition, within three business days of the date a docket number is issued, a copy of the application will be placed in public libraries located within the Project area. A list of these newspapers and public libraries is provided in Environmental Resource Report No. 1 attached under Exhibit F-I.

Impact on the Environment

The Ruby Pipeline Project was designed efficiently to support deliveries to significant numbers of customers. Based on this efficient design criterion, the Malin Hub presented the ideal location for the pipeline termination point due to the number of potential downstream connections with other large pipelines. The Malin Hub was also requested as the delivery point by PG&E, the anchor shipper for the Project. To minimize construction related environmental impacts, Ruby followed the most direct alignment possible to Malin, while avoiding certain geographic features such as wildlife refuges, Areas of Critical Environmental Concern, Wilderness Study Areas, Instant Study Areas, and Native American lands. The route also minimized contact with wild and scenic rivers and other sensitive environmental areas.

⁸⁶ If any notice to an affected landowner is returned to Ruby as non-deliverable, Ruby will make a reasonable attempt to locate the correct address for notifying the affected landowner. An updated landowner list and information about the returned notices will be filed with the Commission within 30 days of the date of filing this Application. A copy of the landowner notification package is attached as Exhibit Z-2.

When Ruby embarked on the pre-filing process, three major alternative routes that would connect Opal, Wyoming to Malin, Oregon were evaluated. Since all three routes would cross extensive areas of federally managed land, Ruby first initiated consultation with the BLM's field offices in September 2007 to discuss preliminary Project routing. Based on an in-depth evaluation of the route alternatives, Ruby selected the most southern route as the proposed route because it provided the best balance between constructability avoidance of environmentally sensitive areas. The results of these evaluations can be found in Resource Report No. 10, Alternatives, included in Exhibit F-I.

Ruby continues to work with affected landowners and agencies to optimize its route and, to that end, is currently evaluating three route alternative options in northwestern Nevada. Ruby currently believes each of the referenced three alternatives are less environmentally and economically favorable than the selected route. One alternative would cross the Sheldon National Wildlife Refuge and two other alternatives, i.e., the Black Rock and Jungo-Tuscarora alternatives, would go significantly further south than the proposed route.

Based on the totality of the extensive preliminary work, Ruby believes its facilities have been designed in a manner that will minimize the impact on landowners and the environment. Ruby based its routing on existing land use, populated areas, surface topography, geologic considerations, cultural issues, and environmental factors, as well as landowner and community input. The chosen route also provides, where appropriate and economic, general proximity to roads and highway infrastructure that will permit Ruby quick access to facilities for maintenance and emergencies.

Ruby is continuing the agency consultation process to secure the necessary permits for the Ruby Pipeline Project. In its Resource Reports, Ruby identifies the procedures it will use to mitigate the effects of the proposed construction.

All necessary air emissions permits will be secured prior to the installation of the compressor units.

Public Benefits

As described in this Application, the Project will provide public benefits to its shippers by offering them the ability to transport Rocky Mountain gas supplies to demand regions in California, the Pacific Northwest, and Nevada. These additional natural gas supplies will replace declining Canadian supplies, increase supply diversity, enhance pipeline reliability, promote gas-on-gas competition, and provide flexibility and reliability as renewable energy is developed. Further, if a future expansion of the Ruby Pipeline capacity is needed, the proposed design for the Ruby Pipeline Project offers expansion capabilities which are both environmentally benign and relatively inexpensive through the addition of compression.

States and communities upstream and along the proposed route of the Ruby Pipeline Project stand to benefit economically from the Project. At present, there is insufficient infrastructure to transport the production growth from the Rocky Mountain region. The development of the Project will provide a significant part of this necessary “takeaway” infrastructure. By accessing demand regions outside of the Rocky Mountain Front Range, the Ruby Pipeline will provide Rocky Mountain producers with the opportunity to access additional markets for their abundant gas supplies. The resulting relief from artificially depressed Rocky Mountain Basin natural gas pricing, as well as the expected increase in area production will yield increased revenues from royalty payments and ad valorem taxes for state governments in Wyoming, Colorado and Utah.

The states and communities along the Project route will also enjoy temporary economic benefits during the Project construction from sales and use tax receipts from Ruby’s taxable construction expenditures, increased local employment, as well as local spending by the construction workforce. Tax revenues generated from the

increased spending by the construction workforce, as well as the long term property tax revenues from the Ruby facilities, will benefit the affected communities along the route.

Policy Statement Conclusion

For all the reasons discussed above, Ruby believes the proposed Project is fully consistent with the Commission's Policy Statement at Docket Nos. PL99-3-000 and 001 due to the minimal environmental impact of the Project combined with the substantial benefits to consumers, shippers, and public policy. Together with the absence of any adverse or unmitigated impacts on existing customers, other existing pipelines in the area, and their captive customers, the merits of the Ruby Pipeline Project satisfy all of the requirements established in the Commission's Policy Statement.

XIII.

PRE-FILING AND PARTICIPATION

On January 28, 2008, Ruby filed a request to initiate the Commission's pre-filing environmental review process. This process allows applicants to work with the Commission's environmental staff in developing environmental analyses related to the Project, as well as to identify issues, and gather input from stakeholders.⁸⁷ As part of this process, Ruby committed to working with FERC staff in the pre-filing review process for approximately 12 months. Since the initiation of the pre-filing review process, the Commission and BLM have been working jointly as cooperating agencies. The pre-filing review process has also helped Ruby in developing positive landowner relationships by opening lines of communication. For instance, the process has helped Ruby secure over 99 percent voluntary survey permission with landowners on the entire Project route. This has been instrumental to Ruby in refining its route in connection with private landowners' properties.

⁸⁷ On January 31, 2008, the Commission approved Ruby's January 28, 2008 letter request to initiate the pre-filing process for its Ruby Pipeline Project. See Docket No. PF08-9-000.

Ruby has sought direct landowner, community, federal, state and local agency input in designing its Project. Ruby initiated consultations with the affected federal, state and local government agencies. As a result, Ruby has adjusted some route segments to reflect routing concerns raised in the pre-filing process, including public scoping meetings. For example, when Ruby initiated the pre-filing process, Ruby contemplated a route that commenced near Opal, Wyoming and extended in a northwesterly direction into Idaho, continuing west through Oregon to the Malin Hub. However, after numerous consultations with permitting agencies and the review of constructability issues, Ruby modified its route to the currently proposed route (with continuing minor adjustments) through Wyoming, Utah, Nevada, and Oregon. In the same manner, Ruby's stakeholder outreach efforts have helped Ruby reroute its pipeline in the Corrine/Brigham City, Utah area to avoid landowner concerns regarding drain tiles. Ruby's initial route through this area traversed a highly cultivated area with many agricultural drain tiles. In response to much public concern and after extensive consultation with the Corrine Drainage District and landowners, Ruby opted to reroute its line through this area. As a result, Ruby was able to reduce the number of drain tiles that would have been affected by the Project in this area from potentially hundreds to ten or fewer drain tiles.

Since commencing the pre-filing process, Ruby, in conjunction with Commission Staff, has conducted numerous public outreach meetings. During February and March 2008, Ruby conducted ten open house meetings in communities along the initial project route (Kemmerer, WY; Montpelier, ID; Tremonton, UT; Brigham City, UT; Logan, UT; Elko, NV; Winnemucca, NV; Reno, NV; Lakeview, OR; and Malin, OR). The Commission conducted its own scoping meetings on two separate occasions. Ruby participated in sixteen FERC scoping meetings. Six of those meetings were held in April 2008 with the various governmental agencies involved in the pre-filing process. These meetings were held on the same days as the initial round of six public scoping meetings in Kemmerer,

Wyoming; Brigham City, Utah; Elko, Nevada; Winnemucca, Nevada; Lakeview, Oregon; and Malin, Oregon.

Subsequent to this initial round of meetings, the Commission held four additional public scoping meetings in October 2008 to address route changes. These four meetings were held in Montpelier, ID, Hyrum, UT, Brigham City, UT, and Lakeview, OR. Ruby has continued to formally and informally engage Commission Staff on this Project.

As part of the pre-filing environmental review, Ruby completed its submission of first drafts of the Ruby Pipeline Project environmental resource reports on September 16, 2008. On November 7, 2008, Commission Staff issued comments on those environmental resource reports. Ruby included responses to those comments in a second draft filed with the Commission on November 18, 2008. Additional comments from the agencies have been incorporated into the final version of the environmental reports filed with this application. Ruby believes that any remaining issues can be addressed quickly and an order addressing the merits of Ruby's proposal may be issued by the Commission by no later than January 2010.

Issuance of an order by this is critical to Ruby given the limited construction windows involved with its Project. In order to meet its March 2011 in-service date, Ruby will have to build significant portions of its pipeline through high country terrain which has a construction window shortened by adverse winter weather which is common in the late spring and early fall. Along with weather concerns, Ruby will also have to contend with wildlife and species restriction windows that will limit the times and locations for construction.⁸⁸ Ruby's has already factored these two issues into

⁸⁸ A discussion of the environmental effects and restriction windows are discussed in greater detail in the Environmental Report being provided as Exhibit G-I.

its schedule. However, should Ruby encounter any permitting or other delays, it is highly likely that Ruby's schedule would be pushed to two construction seasons resulting in both increased costs and greater environmental disturbance.

For these reasons, Ruby believes that it has satisfied the considerations set forth in the Policy Statement. Since the "public benefits" of this Project are substantial, the Commission should, consistent with the procedure outlined in the Policy Statement, proceed to complete its environmental analysis.

X.

PUBLIC CONVENIENCE AND NECESSITY

The construction, ownership, and operation authorization sought herein is required for the Ruby Pipeline Project and is necessary for Ruby to provide the requested transportation service Ruby believes its request is required by, and will serve, the present and future public convenience and necessity as discussed above and as follows:

- The Ruby Pipeline Project is supported by its customers as demonstrated by the signed PAs.
- The Ruby Pipeline Project will provide end-users with flexible, reliable access to a growing, prolific gas supply source.
- The Ruby Pipeline Project will provide Rocky Mountain producers with additional takeaway pipeline infrastructure.
- The Ruby Pipeline Project will provide increased tax revenues for the States of Colorado, Utah, and Wyoming from new natural gas production and to the States of Wyoming, Utah, Nevada and Oregon from pipeline construction revenues and property taxes.
- As demonstrated by the Report on Environmental Factors included as a part of Exhibit F-I, the proposed construction will have no significant adverse environmental impact.

XIV.

The facilities Ruby seeks specific authorization to construct, own, and operate are described as follows:

Ruby Pipeline (Line No. 300A)⁸⁹

Approximately 675.2 miles of 42" diameter pipeline with a design pressure and Maximum Allowable Operating Pressure (MAOP) of 1,000 pounds per square inch gauge (PSIG) on the upstream side of the initial (Roberson Creek) compressor station. The remainder of the pipeline will have a design pressure and MAOP of 1,440 PSIG.

Lateral (Line No. 301A)

Approximately 2.6 miles of 42" diameter pipeline extending from the Malin Hub to the California/Oregon border.⁹⁰

Compression

The Roberson Creek Compressor Station would have a combined total of 69,000 horsepower (HP) [International Standards Organization (ISO)] comprised of three 23,000 HP electric drive units. The Roberson Creek Compressor Station would be located in Section 24, Township 20 North, Range 115 West, Lincoln County, Wyoming.

The Wildcat Hills Compressor Station would consist of two Solar Mars 100 gas turbine-centrifugal compressor units providing 28,668 of installed HP (ISO). The Wildcat Hills Compressor Station would be located in Section 16, Township 12 North, Range 11 West, Box Elder County, Utah.

The Wieland Flat Compressor Station would consist of two Solar Titan 130 gas turbine-centrifugal compressor units providing 39,662 of installed HP (ISO). The Wieland Flat Compressor Station would be located in Sections 28/29, Township 39 North, Range 53 East, Elko County, Nevada.

The Desert Valley Compressor Station would consist of one Solar Titan 130 gas turbine-centrifugal compressor unit providing 19,831 of installed HP (ISO). The

⁸⁹ Wall thickness may vary according to different design factor changes, i.e., road and/or river crossings.

⁹⁰ Ruby understands that on the California side of the border PG&E will construct minor interconnecting facilities in California consisting of approximately 1,000 feet of pipe to connect PG&E facilities to Ruby Pipeline facilities at the California/Oregon border and other appurtenant equipment as needed.

Desert Valley Compressor Station would be located in Section 24, Township 41 North, Range 33 East, Humboldt County, Nevada.

Receipt Points

Diamondville Meter Station (Receipt Point with Enterprise Products Partners, L.P.)

Install measuring and communication facilities and other appurtenant facilities, at CIG's existing King Compressor Station located at Milepost 0.0 in Section 28, Township 21 North, Range 114 West, Lincoln County, Wyoming.

Pearl Creek Meter Station (Receipt Point with Williams Energy Service)

Install measuring and communication facilities and other appurtenant facilities, at CIG's existing King Compressor Station located at Milepost 0.0 in Section 28, Township 21 North, Range 114 West, Lincoln County, Wyoming.

Emerald Springs Meter Station (Receipt Point with CIG)

Install measuring and communication facilities and other appurtenant facilities, at CIG's existing King Compressor Station located at Milepost 0.0 in Section 28, Township 21 North, Range 114 West, Lincoln County, Wyoming.

Topaz Ridge Meter Station (Receipt Point with Overthrust Pipeline Company)

Install measuring and communication facilities and other appurtenant facilities, at the proposed Roberson Creek Compressor Station located at Milepost 5.7 in Section 24, Township 20 North, Range 115 West, Lincoln County, Wyoming.

Bi-Directional Delivery Points

Opal Valley Meter Station (Bi-Directional Point)

Install measurement and communication facilities and other appurtenant facilities, located at a new facility at Milepost 430 in Section 23, Township 39 North, Range 38 East, Humboldt County, Nevada. This facility would interconnect with the Paiute Pipeline Company.

Sapphire Mountain Meter Station (Bi-Directional Point)

Install measurement and communication facilities and other appurtenant facilities, located at a new facility at Milepost 675.2 in Sections 2 and 11, Township 41 South, Range 12 East, Klamath County, Oregon. This facility would interconnect with Tuscarora Gas Transmission Company.

Turquoise Flats Meter Station (Bi-Directional Point)

Install measurement and communication facilities and other appurtenant facilities, located at a new facility at Milepost 675.2 in Sections 2 and 11, Township 41 South, Range 12 East, Klamath County, Oregon. This facility would interconnect with GTN.

Onyx Hill Meter Station (Bi-Directional Point)

Install measurement and communication facilities and other appurtenant facilities, located at a new facility at Milepost 675.2 in Sections 2 and 11, Township 41 South, Range 12 East, Klamath County, Oregon. This facility would interconnect with PG&E.

In addition, Ruby will install the following appurtenant facilities, pursuant to Section 2.55(a) of the Commission's Statements of General Policy and Interpretations under the Natural Gas Act:

- Pig launching and receiving equipment – 11 launchers and 10 receivers;
- 42 mainline block valves at approximately 17-mile intervals along the pipeline;
- Communication facilities – 5 communication towers; and
- Auxiliary equipment at each of the meter stations that will include certain electronic flow measurement equipment, chromatographs, valves, buildings, and yard and station piping.

In the event Ruby is able to provide transportation service prior to the commissioning of the entire facilities, Ruby may at a later date request progressive commissioning authorization as circumstances dictate.

Pipeline Design

The pipeline would be designed in accordance with the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, 49 Code of Federal Regulations (CFR) Part 192. Consistent with a recent DOT notice of proposed rulemaking, Ruby would utilize a 0.80 design factor and 0.541 inches nominal wall thickness in most Class 1 Areas.⁹¹ The section of the pipeline upstream of the Roberson Creek Compressor Station would be built using the more traditional 0.72 design factor for Class 1 locations. Ruby would utilize a 0.60 design factor with a nominal wall thickness of 0.721 inches, in Class 2 Areas, and a 0.50 design factor with a nominal wall thickness of 0.865 inches in Class 3 Areas if any are identified in the course of the Project. Ruby would utilize Grade X-70 high strength steel manufactured per API

⁹¹ Pipeline classification is based on population density as defined in CFR Part 192. Design factors are specified in CFR 192. However, these are the minimum requirement. In many locations Ruby utilizes a design factor which exceeds the minimal requirements.

5L. The Project is mainly located in Class 1 locations. Only 1.8 miles of the 675.2-mile route have a DOT classification other than Class 1. Special design consideration would be given to road crossings, river crossings, fault crossings and any areas with potential for class change in the future that would require heavier wall thickness pipe (i.e., future residential developments).

The specific locations of Ruby's facilities are shown on the map included in Exhibit F. The facilities are estimated to cost approximately \$3.0 billion as detailed in Exhibit K. Consistent the needs of its shippers, Ruby is planning to place the facilities into service no later than the first quarter of 2011 and is thus requesting certificate authorizations by January 2010. Because of the time that is required to construct the Ruby Pipeline Project, construction-related activities are expected to commence as early as February, 2010 following the submission of implementation plans and the issuance of appropriate notices to proceed.

XV.

Upon the granting of the authority requested herein and the acceptance thereof, Ruby will timely submit, pursuant to Section 154 of the Commission's Regulations, its FERC Gas Tariff, Original Volume No. 1.

Other than any permits described in the Environmental Resource Reports attached under Exhibit F-I, Ruby knows of no other application to supplement or effectuate the described proposal which is required to be filed by Ruby or any other person with this Commission or with any other Federal, state, or other regulatory body.

XV.

In accordance with Section 157.14 of the Commission's Regulations, the following exhibits are attached, incorporated by reference, or omitted for the reasons indicated.

EXHIBIT A – ARTICLES OF INCORPORATION AND BYLAWS

Attached as Exhibit A is a copy of Ruby's Certificate of Formation, effective November 5, 2007 and Ruby's L.L.C. Agreement.

EXHIBIT B - STATE AUTHORIZATIONS

Ruby Pipeline Company, L.L.C., a Delaware limited liability company, is authorized to conduct business as a foreign limited liability company in the States of Wyoming, Idaho, Nevada, Utah and Oregon. Attached as Exhibit B are copies of Ruby's state authorizations.

EXHIBIT C - COMPANY OFFICIALS

Attached as Exhibit C is a current listing of Ruby's Company Officials.

EXHIBIT D - SUBSIDIARIES AND AFFILIATION

Ruby is a wholly-owned indirect subsidiary of El Paso Corporation. Attached as Exhibit D is a list of Ruby's Subsidiaries and Affiliations.

EXHIBIT E - OTHER PENDING APPLICATIONS AND FILINGS

Other than the pre-filing proceeding for the Ruby Pipeline Project in Docket No. PF08-9-000, there are no applications or filings made by Ruby with and now pending before this Commission that directly and significantly affect this Application. This exhibit is therefore omitted.

EXHIBIT F - LOCATION OF FACILITIES

Attached as Exhibit F is a geographical map reflecting the location of the proposed facilities.

EXHIBIT F-I - REPORT ON ENVIRONMENTAL FACTORS

Attached as Exhibit F-I is the Environmental Report. The Environmental Resource Reports have been prepared in accordance with the Commission's regulations and certificate filing requirements, as codified at Section 380.12 of the Commission's Rules of Practice and Procedure. Ruby is filing full-sized sets and reduced-size sets of voluminous attachments such as the topographic maps and aerial alignment sheets with the original of the Application to be filed with the Commission Secretary. In addition, Ruby will file two copies of the Application containing both full-sized sets and reduced-sized sets of the diagrams with the Office of Energy Projects. Certain components of Ruby's environmental reports contain either Critical Energy Infrastructure Information or privileged, confidential information. Ruby is providing such information separately and is requesting privileged and confidential treatment for these components of the environmental reports.

EXHIBIT G - FLOW DIAGRAMS SHOWING SUMMER AND WINTER SUSTAINABLE DESIGN CAPACITY

Attached as Exhibit G is an explanation of the exhibit and flow diagrams reflecting the sustainable design capacity and operating conditions of the proposed facilities.

EXHIBIT G-I - FLOW DIAGRAMS REFLECTING MAXIMUM CAPABILITIES

Attached as Exhibit G-I is an explanation of the exhibit and a flow diagram reflecting the maximum design capacity of the proposed facilities.

EXHIBIT G-II - FLOW DIAGRAM DATA

Attached as Exhibit G-II is a statement of engineering design data in explanation and support of the flow diagram submitted as part of Exhibit G.

EXHIBIT H - TOTAL GAS SUPPLY DATA

Attached as Exhibit H, Ruby is providing a narrative on gas supply data pertaining to the Ruby Pipeline Project.

EXHIBIT I - MARKET DATA

Attached as Exhibit I are copies of the 14 executed PAs discussed in this Application.

EXHIBIT J - CONVERSION TO NATURAL GAS

This exhibit is inapplicable and is omitted.

EXHIBIT K - COST OF FACILITIES

Attached as Exhibit K is a schedule detailing the estimated cost of facilities proposed to be constructed and operated.

EXHIBIT L - FINANCING

Submitted hereto is a narrative describing the financing arrangements for the Ruby Pipeline Project and the pre-tax return calculation statement, pro forma income statement, balance sheet and cash flow statement.

EXHIBIT M - CONSTRUCTION, OPERATION AND MANAGEMENT

Operation and maintenance of the Ruby pipeline facilities will be performed by affiliate employees of the El Paso Western Pipelines, on behalf of Ruby. No agreement has yet been executed for these services; therefore, this exhibit is omitted at this time. Ruby will supplement its application following the completion and execution of such an agreement.

EXHIBIT N - REVENUES-EXPENSES-INCOME

Attached as Exhibit N are several schedules reflecting the estimated cost-of-service, the estimated revenues, and the derivation of the initial rates. Ruby is also submitting an Explanatory Statement which explains and supports the rate derivation for the Project.

EXHIBIT O - DEPRECIATION AND DEPLETION

The support for the depreciation rate is included in the Exhibit N Explanatory Statement. Therefore, this exhibit is omitted.

EXHIBIT P - TARIFF

Attached as Exhibit P are those pro forma tariff sheets necessary to effectuate Ruby's FERC Gas Tariff, Original Volume No. 1 for the new interstate pipeline company. Ruby is also submitting the Affidavit of Mr. Richard Derryberry explaining and supporting the proposed tariff and its various provisions for the Project. Ruby will file the pro forma tariff sheets, pursuant to Part 154 of the Commission's Regulations, upon grant of the authorizations requested herein.

EXHIBIT Z-1 - CASH MANAGEMENT AGREEMENT

Attached as Exhibit Z-1 is a copy of Ruby's cash management agreement that is currently in place between Ruby Pipeline, L.L.C. and El Paso Ruby Holding Company, L.L.C.

EXHIBIT Z-2 - SAMPLE LANDOWNER NOTIFICATION PACKAGE

Attached as Exhibit Z-2 is a sample landowner notification package that includes all the materials that will be sent to affected landowners along the route of the proposed Ruby Pipeline Project.

XV.

Appended is a statement in conformity with Section 2.1 of the Commission's Statements of General Policy and Interpretations and Section 157.6(b)(7) of the Commission's Regulations Under the NGA suitable for publication in the Federal Register, summarizing this Application.

XVII.

The name, title, mailing address, telephone and facsimile numbers of those persons to whom correspondence and communications concerning this Application should be directed are as follows:

Mr. Richard L. Derryberry
Director, Regulatory Affairs
Ruby Pipeline, L.L.C.
Post Office Box 1087
Colorado Springs, CO 80944
Telephone: (719) 520-3782
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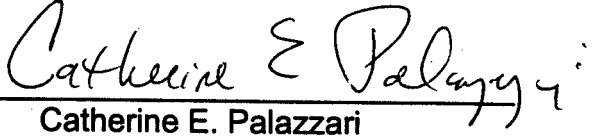
XVIII.

WHEREFORE, Ruby respectfully requests a certificate of public convenience and necessity under Section 7 of the NGA to construct and operate the Ruby Pipeline facilities located in the States of Wyoming, Utah, Nevada and Oregon; authorization for its proposed recourse rates for transportation service and approval of its Pro Forma Tariff; and issuance of two blanket certificates of public convenience and necessity enabling Ruby to provide open-access transportation service and authorization for the construction, ownership, and operation of facilities and certain certificate amendments and abandonments.

Ruby also respectfully requests a PD be issued by the Commission in late July or early August 2009 authorizing the various financing, rate, contract, service, and other tariff provisions discussed herein which are integral to the Ruby Pipeline Project.

Respectfully submitted,

RUBY PIPELINE, L.L.C.

By 
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Vice President

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Vice President and General Counsel
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Counsel for
Ruby Pipeline, L.L.C.
Dated: January 26, 2009