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

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

CenterPoint Energy – Mississippi River Transmission Corporation — Docket No. CP04-346-000

ORDER ISSUING CERTIFICATE

(Issued October 1, 2004)

1. On June 1, 2004, CenterPoint Energy – Mississippi River Transmission Corporation (Mississippi River) filed an application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations.[1] Mississippi River seeks authorization to construct and operate certain pipeline facilities in Madison and St. Clair Counties, Illinois to provide additional service to the Venice Power Plant owned by Union Electric Company – AmerenUE (AmerenUE).

2. Approval of Mississippi River's application will serve the public interest because the proposed project will provide natural gas transportation service to accommodate the expansion of AmerenUE's electric generating facility. Accordingly, we will grant the requested certificate authorization, as discussed and conditioned below.

**Background and Proposal**

3. AmerenUE owns and operates the Venice Power Plant in Venice, Illinois and currently receives natural gas transportation service from Mississippi River. AmerenUE intends to install two additional natural gas-fired turbines at its Venice Power Plant. Mississippi River's existing lateral line that serves the Venice Power Plant, Line A-122,

[1] Originally, Mississippi River filed an application under section 157.203(c) of the Commission's prior notice provisions of the Commission's blanket certificate regulations. Subsequently, on July 14, 2004, it filed a letter requesting that the Commission convert its filing to a NGA section 7(c) application.

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is a low-pressure line that is not capable of delivering the additional volumes necessary to operate the new electric generation facilities. AmerenUE has requested that Mississippi River install new facilities that will accommodate additional deliveries of up to 134,000 Dth per day to serve AmerenUE's expanded plant.

4. Mississippi River proposes to construct, own, and operate a new delivery lateral (Line A-334); a new measurement station; and a new compressor station (the Horseshoe Lake Compressor Station). The new Line A-334 will have a maximum capacity of 134,000 Dth per day and will consist of approximately 3.6 miles of 20-inch pipe beginning at Mississippi River's Horseshoe Lake Terminal and ending at AmerenUE's Venice Power Plant. The Horseshoe Lake Compressor Station will consist of four natural gas driven compressor units, totaling 5,580 horsepower (hp). Additionally, Mississippi River states that the compression facilities included in the project will enhance the flexibility of transportation service to other customers on Mississippi River's interstate pipeline system.

5. Mississippi River and AmerenUE entered into a Transportation Service Agreement, as amended by a Letter Agreement, stipulating a 10-year firm transportation agreement under which Mississippi River will provide 30,000 Dth per day of firm service under Rate Schedule FTS.[2] The AmerenEU contract for 30,000 Dth per day, 22 percent of the total 134,000 Dth per day of new capacity, is the only commitment for capacity on the proposed lateral.

6. For service on the proposed facilities, AmerenEU will pay a negotiated FTS reservation charge totaling $109,500 per month.[3] AmerenUE will also pay the currently effective FTS maximum usage charge and the maximum authorized overrun charge, which at this time are $.0055 per Dth and $0.735 per Dth, respectively, and will provide fuel use and lost and unaccounted for gas. AmerenUE also agrees to pay $4 million in

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[2] The parties' contractual arrangements consist of three agreements: a March 26, 2004 Transportation Service Agreement (Service Agreement); an April 8, 2004 Letter Agreement; and an April 19, 2004 Facilities Agreement. While the Service Agreement provided for a primary term of one year with an evergreen provision, this was modified into a 10-year agreement by the subsequent Letter Agreement.

[3] The reservation charge translates to a rate of $3.65 per Dth, which exceeds the current $2.0330 recourse rate for service in the zone in which the proposed facilities are located.

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advance reservation charges when the Commission approves the project and an additional $4 million in reservation charges on April 1, 2005, the effective date of the Service Agreement.

7. Under a Facilities Agreement, AmerenUE must reimburse Mississippi River for any actual costs in excess of the estimated $18 million facilities cost, as well as any project cost overruns caused by AmerenUE. If the actual project costs are less than the estimated $18 million, Mississippi River will reduce AmerenUE's residual $4 million advance payment by the difference between the actual costs and the estimated project costs. The Facilities Agreement also stipulates fees for early termination of the Service Agreement ranging from $14,165,450 during contract Year 1 to $11,921,050 during Year 9.

## Procedural Matters

8. Notice of Mississippi River's prior notice application and subsequent request for case-specific NGA section 7(c) authorization were published in the *Federal Register* on June 16, 2004, (69 Fed. Reg. 33,897) and July 22, 2004 (69 Fed. Reg. 43,835), respectively. Laclede Energy Resources, Inc., AmerenUE, and Laclede Gas Company (Laclede) filed timely, unopposed motions to intervene.[4]

9. Laclede filed comments stating that Mississippi River fails to support its request for rolled-in rate treatment for the proposed facilities. It also contends that Mississippi River fails to support its assertion that the proposed construction will enhance the flexibility and reliability of its system.

## Discussion

10. Mississippi River's application pertains to the construction of facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of NGA section 7.

[4] Timely, unopposed motions to intervene are granted by operation of Rule 214.

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### A. Compliance With Certificate Policy Statement

11. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how it will evaluate proposals for certificating new construction.[5] The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the new construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

13. For the reasons discussed below, we are denying Mississippi River's request for pre-approval of rolled-in rate treatment. Our action is without prejudice to Mississippi River filing for and fully supporting rolled-in rate treatment for these facilities in a future rate case. Since the cost of these facilities will not be rolled into Mississippi River's system-wide rates absent a showing by Mississippi River in its NGA section 4 rate proceeding that rolled-in rate treatment will not result in a subsidy by its other customers, we can grant approval for the proposed project consistent with the Policy Statement.

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[5] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) (Policy Statement).

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14. The purpose of the new delivery lateral pipeline is to serve AmerenUE's power plant and facilitate firm transportation service to AmerenUE. The proposal will not adversely impact service to Mississippi River's other customers. Regarding other pipelines and their customers, we find that the proposed project is not designed to serve or capture any customers of existing pipelines.

15. Further, the proposed project will have a minimal impact on landowners or communities. Approximately 2.2 miles of the 3.6–mile pipeline would be constructed parallel to an abandoned railroad track right-of-way. The meter station would be constructed at the Venice Power Plant and the compressor station would be constructed within Mississippi River's existing 5.7-acre Horseshoe Lake facility.

16. The proposed facilities will provide additional deliverability required by AmerenUE's re-powering project and will facilitate firm transportation service to AmerenUE's new facilities. Therefore, consistent with the Policy Statement and NGA section 7, we find approval of Mississippi River's proposal to be in the public convenience and necessity.

### B. Rate Issues

17. Mississippi River requests pre-approval to roll in the cost of the proposed facilities when it files its next general rate increase under NGA section 4. Laclede, a firm transportation customer of Mississippi River, objects to rolled-in rate treatment asserting that Mississippi River fails to show that such rate treatment will not result in subsidization of the proposed facilities by existing customers, as required by the Commission's Policy Statement. The Commission agrees.

18. In Exhibit N of its July 20, 2004 supplemental filing, Mississippi River provides a cost/revenue study showing that projected revenues will slightly exceed the cost of providing service on the proposed lateral facilities over the 10-year life of the AmerenUE contract. Mississippi River's calculation of revenue includes $8 million in advance reservation charges and $109,500 from the negotiated monthly reservation charge. Mississippi River's calculation also includes projections of annual interruptible transportation revenue for additional service, beyond the contract levels, that Mississippi River states it anticipates providing to AmerenUE.

19. At this point in time there is no basis for predicting how much, if any, interruptible revenue Mississippi River will receive for service over the proposed lateral. Further, the Commission authorizes applicable initial recourse rates in certificate proceedings, rather

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than making determinations regarding specific negotiated rates for proposed services,[6] and addresses issues regarding the allocation of costs and revenues between recourse rate and negotiated rate shippers in the context of general NGA section 4 rate proceedings.[7] Revenues from Mississippi River's recourse rate would not be sufficient to cover project costs. Accordingly, we will deny Mississippi River's request for a predetermination favoring rolled-in rate treatment when Mississippi River makes its next general section 4 rate filing. Even using the negotiated rates associated with the project, the annual revenue under the contract ($2,114,000)[8] is still insufficient to cover the projected cost of service for any of the first six years of the 10-year period used by Mississippi River for its comparison. In addition, the $2,114,000 of annual revenue for each year of the 10-yar period does not recover the total cost projected by Mississippi River for the same 10-year period.[9] Therefore, a predetermination in favor of rolled-in rates is not justified. Moreover, under the terms of the Service Agreement between Mississippi River and AmerenUE, should Mississippi River receive authorization to roll in the costs of the proposed facilities, AmerenUE's monthly negotiated reservation change will be reduced

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[6] *See ANR Pipeline Co.*, 108 FERC ¶ 61,042, at P 21 (2004); *Gulfstream Natural Gas System, LLC.*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n. 19 (2002).

[7] *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Service of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,242 (1996) (Issues regarding the appropriate allocation of costs between recourse rate shippers and negotiated rate shippers will be addressed fully in the pipeline's section 4 rate cases).

[8] We first amortized $8 million of advance reservation charges over the 10-year term of AmerenUE's service agreement, then add the monthly negotiated reservation charge: $800,000 + (109,500 x 12) = $2,114,000.

[9] *See* Mississippi River's application, Exhibit N, page 1 of 9.

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to Mississippi River's existing, and currently lower, recourse rate.[10] Based on the information currently before us, it appears that this would only increase the degree of subsidization.[11]

20. As stated earlier, our finding is without prejudice to Mississippi River's submitting a fully supported NGA section 4 filing demonstrating that rolling in the cost of these facilities will not result in such subsidization. The filing must include a separate cost and revenue study for the proposed lateral and appurtenant facilities as outlined in section 154.309 of the Commission's regulations. The filing should include an update on the cost-of-service for the proposed lateral and facilities based on operational data, including the actual cost of the lateral facilities and a compression gas flow analysis describing compression and operating pressure applicable to the lateral. Further, Mississippi River must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail such that in any future NGA section 4 rate cases the negotiated rate revenues can be identified in Statements G, I, and, J as provided in section 154.312.[12]

### C. Environmental

21. Commission staff prepared an Environmental Assessment (EA) for Mississippi River's proposal that addressed soils, water resources, federally listed threatened and endangered species, land use, cultural resources, air quality, noise quality and alternatives. Based on the discussion in the EA, the Commission concludes that if constructed in accordance with Mississippi River's application and supplements filed, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

22. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities.

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[10] *See* Application at n. 1.

[11] Rolling in the costs of the proposed lateral would result in a 6.09 percent increase in Mississippi River's firm reservation rate. *See* Mississippi River's July 20, 2004 filing, Exhibit N at 8.

[12] *See, e.g.*, *Transwestern Pipeline Company*, 108 FERC ¶ 61,157, at P 30 (2004).

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However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission. [13]

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

### D. Conclusion

24. For all the above reasons, the Commission finds that Mississippi River's proposed project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the proposed facilities should be issued, subject to the conditions discussed herein.

25. At a hearing held on October 1, 2004, the Commission, on its own motion, received and made a part of the record all evidence, including the application, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Mississippi River to construct and operate the proposed facilities, as described more fully in the application and in the body of this order.

(B) The certificate authorized in Ordering Paragraph (A) above is conditioned upon Mississippi River's compliance with all applicable Commission regulations under the NGA, particularly paragraphs (a), (c), (e), and (f) of section 157.20 of such regulations.

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

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(C) Construction of the proposed facilities shall be completed and made available for service within 12 months from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(D) Mississippi River's request for rolled-in rate treatment is denied without prejudice to Mississippi River's submitting a fully supported NGA section 4 filing to roll-in the cost of these facilities.

(E) Mississippi River shall maintain separate books, accounts, and records for transportation provided under its negotiated rate and for transportation provided under recourse rates in accordance with section 154.309 of the Commission's regulations.

(F) The certificate issued in Ordering Paragraph (A) above is conditioned upon Mississippi River's compliance with the environmental conditions set forth in the Appendix to this order. Mississippi River shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Mississippi River. Mississippi River shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Linda Mitry,
Acting Secretary.

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## Appendix

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Mississippi River shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the EA, unless modified by this order. Mississippi River must:

    a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
    b. justify each modification relative to site-specific conditions;
    c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
    d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification**.

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

    a. the modification of conditions of this order; and
    b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

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

4. Mississippi River shall not begin construction activities **until:**

    a. the staff receives comments from the U.S. Fish and Wildlife Service (FWS) regarding survey reports and the proposed action;
    b. the staff completes informal consultation with the FWS; and

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c. Mississippi River has received written notification from the Director of OEP that construction or use of mitigation may begin.

5. Mississippi River shall prevent project-related disturbance of the access road through sites 11MS2088, 11MS2099, 11MS2100, and 11MS2101.

6. Mississippi River shall defer construction and use of facilities and staging, storage, and temporary work areas and to-be-improved access roads **until**: Mississippi River files the Illinois SHPO's comments on whether a deed covenant would still be necessary and the Director of OEP notifies Mississippi River in writing that it may proceed.

7. Mississippi River shall make all reasonable efforts to assure its predicted noise levels from the Horseshoe Lake Compressor Station, including the emergency generator and the existing meter/regulatory station, are not exceeded at nearby noise-sensitive areas (NSAs) and shall file noise surveys showing this with the Secretary **no later than 60 days** after placing the Horseshoe Lake Compressor Station in service. However, if the noise attributable to the operation of the Horseshoe Lake Compressor Station at full load, including the emergency generator and the existing meter/regulator station, exceeds an $L_{dn}$ of 55 dBA at any nearby NSAs, Mississippi River shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Mississippi River shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.