

161 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Eastern Shore Natural Gas Company

Docket No. CP17-28-000

ORDER ISSUING CERTIFICATE

(Issued October 4, 2017)

1. On December 30, 2016, Eastern Shore Natural Gas Company (Eastern Shore) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate pipeline, compression, and auxiliary facilities in New Castle and Sussex Counties, Delaware; Cecil County, Maryland; and Chester and Lancaster Counties, Pennsylvania (2017 Expansion Project). For the reasons discussed below, the Commission will grant Eastern Shore's requested certificate authorizations, subject to conditions.

I. Background and Proposal

2. Eastern Shore,³ a corporation organized under the laws of Delaware, is a natural gas company, as defined by NGA section 2(6),⁴ engaged in the business of transporting and storing natural gas in interstate commerce. Eastern Shore owns and operates an approximately 500-mile-long pipeline system that extends from interconnections in Pennsylvania with Texas Eastern Transmission Company, LP (Texas Eastern), Transcontinental Gas Pipe Line Company, LLC (Transco), and Columbia Gas Transmission, LLC through Delaware to termini in Maryland.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2017).

³ Eastern Shore is a wholly-owned subsidiary of Chesapeake Utilities Corporation.

⁴ 15 U.S.C. § 717a(6) (2012).

3. Specifically, Eastern Shore proposes to construct and operate:
- a. six pipeline loops: the Parkesburg and Jennersville Loops in Chester County, Pennsylvania, consisting of approximately 4.5 miles of 16-inch-diameter pipeline and 7.3 miles of 24-inch-diameter pipeline, respectively; the Fair Hill Loop in Chester County, Pennsylvania, and Cecil County, Maryland, consisting of approximately 3.6 miles of 24-inch-diameter pipeline; the Summit Loop in New Castle County, Delaware, consisting of approximately 0.6 miles of 10-inch-diameter pipeline; and the Hearn's Pond and Laurel Loops in Sussex County, Delaware, consisting of approximately 1.6 miles and 5.1 miles, respectively, of 10-inch-diameter pipeline;
 - b. a mainline extension in Sussex County, Delaware, consisting of approximately 16.9 miles of 10-inch-diameter pipeline;
 - c. an additional 3,750 horsepower natural gas-fired compressor unit and appurtenant facilities, including a natural gas-fueled standby generator with a rated output of 750 kilowatts-electric, at the existing Daleville Compressor Station in Chester County, Pennsylvania;
 - d. upgraded and larger mainline taps, piping, and valves at the existing Honey Brook Meter and Regulator Station in Lancaster County, Pennsylvania; and
 - e. two pressure control stations in Sussex County, Delaware – one at the existing Millsboro Meter and Regulator Station and the other near the Town of Delmar.

Eastern Shore states that the project is designed to provide 61,162 dekatherms per day (Dth/d) of additional firm transportation service from interconnections with Texas Eastern and Transco at Honey Brook and Parkesburg, Pennsylvania, respectively, to Eastern Shore's three delivery zones.

4. Eastern Shore held four non-binding open seasons from 2014 to 2016.⁵ As a result of the open seasons, Eastern Shore entered into 15-year binding precedent agreements with six existing customers for 100 percent of the service to be made available by the project. The precedent agreements are with Chesapeake Utilities Corporation – Delaware (16,500 Dth/d), Chesapeake Utilities Corporation – Maryland (3,000 Dth/d), Delaware

⁵ The open seasons were held February 21 to March 14, 2014, January 5 to January 16 and June 3 to June 30, 2015, and January 25 to February 9, 2016.

City Refining Company LLC (Delaware City Refining) (27,725 Dth/d), Delmarva Power and Light (10,000 Dth/d), Sandpiper Energy (3,500 Dth/d), and Easton Utilities (437 Dth/d).

5. As noted above, as part of this project, Eastern Shore entered into a precedent agreement to provide 27,725 Dth/d of firm transportation service for Delaware City Refining. Eastern Shore currently provides 45,000 Dth/d of transportation service to another existing customer, Calpine Energy Services, L.P. (Calpine), under an existing service agreement. Eastern Shore has agreements with these two customers calling for it to receive these customers' gas in Receipt Zone 2 for transportation to the delivery zones. However, in conjunction with the proposals herein, Eastern Shore has entered into additional 5-year agreements with Calpine and Delaware City Refining, which provide that 37,500 Dth/d of Calpine's service and 15,000 Dth/d of Delaware City Refining's service may originate from Receipt Zone 1 for transportation to Receipt Zone 2 during the term of the agreements. The Receipt Zone 1-only transportation service for Calpine and Delaware City Refining is not additive with the 61,162 Dth/d of transportation service associated with the project.

6. Further, Eastern Shore performs its existing transportation service for Calpine under its Off Peak Firm Transportation rate schedule (Rate Schedule OPT). This rate schedule provides that Eastern Shore may decline to schedule service on any gas day during the peak months (November 1 through April 30) for up to an agreed upon number of days, as reflected in the shipper's transportation service agreement. Currently, Eastern Shore may decline to schedule Calpine's service for up to 90 days. In conjunction with the proposals herein, Eastern Shore and Calpine signed a precedent agreement which reduced the number of days Eastern Shore may decline to schedule service from 90 to 30 days.

7. Eastern Shore estimates the proposed project will cost approximately \$98,578,673. Eastern Shore proposes a new incremental recourse rate for service on the project. Two customers have elected to pay negotiated rates; the other five customers have elected to pay the incremental recourse rate. All project shippers will pay Eastern Shore's existing commodity and interruptible rates, as well as the existing system-wide fuel rate.

II. Notice, Interventions, and Comments

8. Notice of Eastern Shore's application was published in the *Federal Register* on January 18, 2017, with comments due by February 1, 2017.⁶ Atlantic Basin Energy Resources, LLC; Calpine; Delaware City Refining; Easton Utilities Commission; Exelon

⁶ 82 Fed. Reg. 5564 (2017).

Corporation; and Pivotal Utility Holdings, Inc. d/b/a Elkton Gas filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁷

9. On January 26, 2017, Mario M. Rosales filed a comment letter stating that a commercial property owned by the M&F Rosales Family, LP – identified during the landowner notification process – would be impacted by the construction of the pipeline. Specifically, Mr. Rosales comments that the pipeline might interfere with the telephone and electricity connections, damage the septic system, and interfere with access to parking. Mr. Rosales' comments are addressed in the Environmental Assessment (EA) prepared for the project.

10. On January 31, 2017, Ronda Kwietniak, a property owner, filed a comment letter stating that construction of an additional pipeline on her property would raise new safety concerns, result in damage to her property, and might force her to move from her home. Ms. Kwietniak's comments are also addressed in the EA.

III. Discussion

11. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁸

A. Certificate Policy Statement

12. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new 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

⁷ 18 C.F.R. § 385.214(c) (2017).

⁸ 15 U.S.C. § 717f(c), (e) (2012).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy, the threshold requirement for existing 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 route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis, where other interests are addressed.

14. Eastern Shore's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Eastern Shore's proposal to charge an incremental recourse rate which is designed to recover the cost of service associated with this project.¹⁰ Thus, subject to the conditions discussed in this order, we find that Eastern Shore's existing customers will not subsidize the project.

15. We also find that the proposed project will not degrade service to existing customers. In addition, there will be no adverse impact on any other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. Further, no pipeline company or their captive customers have protested the application.

16. We find that Eastern Shore's proposal has been designed to minimize impacts on landowners and surrounding communities. Specifically, to the extent that it is feasible, Eastern Shore proposes to locate the pipeline loops and the mainline extension within or adjacent to the rights-of-way associated with its existing pipelines or existing roads.¹¹

¹⁰ See *infra* PP 18-19.

¹¹ Eastern Shore Application Resource Report 1 at 1-3 to 1-4; Resource Report 8 at tbl. 8.1-3.

Eastern Shore will install the new compressor unit and upgraded and larger mainline taps, piping, and valves within existing station yards.¹²

17. The proposal will enable Eastern Shore to provide 61,162 Dth/d of firm transportation service for its customers that signed precedent agreements for the total capacity of the project. Based on the benefits the project will provide and the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Eastern Shore's proposal, as conditioned in this order.

B. Rates

1. Initial Rates

18. Stating that revenues generated under its existing tariff rates would be insufficient to recover the 2017 Expansion Project's annual cost of service, Eastern Shore proposes to charge incremental recourse reservation rates designed to recover the incremental cost of service associated with the project. Eastern Shore states that the proposed incremental recourse rates were developed based on its system's existing zonal structure and reservation rates.¹³ As opposed to developing incremental rates by allocating the total incremental project costs equally among each delivery zone and dividing by each zone's respective incremental billing determinants, Eastern Shore, as detailed below, first calculated an "incremental adder" that it states equitably allocates all incremental costs associated with the project among the project shippers' varying delivery locations.¹⁴ This adder was then added to the existing delivery zone reservation rate for each zone to arrive at the proposed incremental reservation rates. Eastern Shore states that its proposed methodology distributes the costs of the project evenly among all of the 2017 Expansion Project shippers. Conversely, Eastern Shore contends that calculating an individual incremental rate to recover the costs of the project, without regard to Eastern Shore's existing zonal rate structure, would result in project shippers with deliveries in Zones 1 and 2 paying incremental rates (because the incremental rates would be higher than the currently-effective rates for these zones), while project shippers with deliveries in Zone 3

¹² Eastern Shore Application Resource Report 1 at 1-5.

¹³ Eastern Shore's currently-effective reservation rates are \$7.1350, \$12.6427 and \$17.8757 for Delivery Zones 1, 2, and 3, respectively. Eastern Shore Natural Gas Company, FERC NGA Gas Tariff, Third Revised Volume No. 1; Sheet No. 4, Part 284 Currently Effective Rates-FT/ST, 0.1.3.

¹⁴ Eastern Shore Application Exhibit N at 3.

would pay existing rates (because the incremental rate for such service would be less than the currently-effective rate).¹⁵

19. Eastern Shore projects an annual cost of service for the project of \$16,326,143.¹⁶ Eastern Shore states that providing service under existing rates would generate revenues of \$14,618,504, resulting in a \$1,707,639 revenue shortfall. Dividing the revenue deficiency by the total new delivery zone capacity of 61,162 Dth/d, and an additional service obligation related to Calpine transferring an existing 45,000 Dth/d service agreement from OPT \leq 90 service to OPT \leq 30 service,¹⁷ Eastern Shore calculated an incremental adder of \$2.0756. Adding this amount to the current reservation charge for each delivery zone, Eastern Shore proposes incremental reservation charges of \$9.2106, \$14.7183, and \$19.9513, for Delivery Zones 1, 2 and 3, respectively. We approve Eastern Shore's proposed incremental reservation charges as the initial recourse charges for firm service using the project capacity.

20. Eastern Shore proposes to charge its currently-effective commodity charges for service on the project.¹⁸ We approve Eastern Shore's proposal to charge its existing commodity charges.

2. Fuel

21. Eastern Shore proposes to use its currently effective system fuel retention percentage of 0.46 percent for this project. Eastern Shore states that its estimated fuel consumption for the expansion capacity during peak day conditions will be 113,333 Dth. Using its existing fuel retention percentage, Eastern Shore would recover 115,111 Dth.

¹⁵ The Commission previously approved a similar methodology for calculating incremental rates in connection with Eastern Shore's Greenspring Expansion Project. *Eastern Shore Natural Gas Co.*, 142 FERC ¶ 61,124, at PP 30-32 (2013).

¹⁶ Eastern Shore derived its annual cost of service using its existing transmission depreciation rate of 2.67 percent and pre-tax rate of return from its 2012 rate case settlement. *Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012).

¹⁷ Eastern Shore provides a reservation credit to shippers when it elects to decline to schedule service.

¹⁸ Eastern Shore's currently-effective tariff commodity charges are \$0.0052, \$0.0104, and \$0.0156 for Deliver Zones 1, 2, and 3, respectively. Eastern Shore Natural Gas Company, FERC NGA Gas Tariff, Third Revised Volume No. 1, Sheet No. 4, Part 284 Currently Effective Rates-FT/ST, 0.1.3.

Eastern Shore estimated the additional projected compressor fuel usage required for this project for both the winter and summer peak day models. Based on this additional fuel usage, Eastern Shore determined that, with the incremental throughput that will be created by this project, the current system fuel retention percentage will support the additional fuel and result in no subsidy by existing customers. Eastern Shore will true-up any differences between the projected and actual fuel costs in its annual fuel retention filing as required by section 31 of the General Terms and Conditions of its tariff. We accept Eastern Shore's proposal to use its currently-effective fuel retention percentage for the expansion capacity.

3. Negotiated Rates

22. Eastern Shore proposes to charge two of the project customers negotiated rates. Eastern Shore must file either the negotiated rate agreements or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement¹⁹ and the Commission's negotiated rate policies for these customers.²⁰ The filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.²¹

4. Reporting Incremental Costs and Revenues

23. To ensure that costs are properly allocated between Eastern Shore's existing customers and the incremental services proposed in this proceeding, we will require Eastern Shore to keep separate books and accounting of costs and revenues attributable

¹⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burling Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

²⁰ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), order on *reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²¹ Eastern Shore is required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2017). *E.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

to the incremental services and capacity created by the project as required by section 154.309 of the Commission's regulations.²² The books should be maintained with applicable cross-reference as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and be provided consistent with Order No. 710.²³

C. Environmental Analysis

24. On May 17, 2016, Commission staff began its environmental review of the 2017 Expansion Project by granting Eastern Shore's request to use the pre-filing process in Docket No. PF16-7-000. As part of the pre-filing review, staff participated in open houses sponsored by Eastern Shore in Chester and Lancaster Counties, Pennsylvania; Cecil County, Maryland; and Sussex, Kent, and New Castle Counties, Delaware to explain the Commission's environmental review process to interested stakeholders.

25. On August 1, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; and affected property owners.²⁴

26. In response to the NOI, the Commission received comments from the Pennsylvania Department of Environmental Protection (PADEP), West Sadsbury Township, Chester Water Authority, Maryland Historical Trust, Delaware Department of Natural Resources and Environmental Control – Division of Fish and Wildlife, Franklin Township Historical Commission, National Park Service, U.S. Department of Agriculture, and landowners.

27. The primary concerns raised by the agencies and townships during the scoping process included impacts on the following resources: wetlands and waterbodies (including the White Clay Creek National Wild and Scenic River); existing water mains; bog turtles and their habitat; and historic, scenic, or cultural resources located within the project corridor. Five private landowners also filed comments expressing questions or concerns regarding the right-of-way acquisition process; overall public safety and pipeline reliability, including a request for shut-off valves; restoration efforts; and the

²² 18 C.F.R. § 154.309 (2017).

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

²⁴ 81 Fed. Reg. 53,134 (2016).

procedures to be employed should future roadway widening occur where the pipeline is installed under a highway.

28. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an EA for Eastern Shore's proposal. The EA was prepared with the cooperation of the U.S. Army Corps of Engineers (Corps) and U.S. Department of Agriculture's Natural Resources Conservation Service. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.²⁵

29. The EA was issued for a 30-day comment period and placed into the public record on May 12, 2017. The Commission received comments on the EA from the Environmental Protection Agency (EPA); PADEP – Bureau of Air Quality; Chester County Planning Commission (Chester County Planning); Chester County Water Resources Authority (Chester County Water); Franklin Township; and a stakeholder, Dick Whipple. Eastern Shore provided a response to each of the commenters. Due to overlapping concerns from commenters, our discussion is based on resource subject groupings.

1. Construction Notifications

30. Chester County Planning requests that Eastern Shore provide contact information for its environmental inspector to various county departments and inform emergency personnel and school districts if project activities would affect transportation routes. Eastern Shore agreed to provide this information at the same time landowners are notified.²⁶

2. Soil Erosion and Sedimentation Control

31. Chester County Water and Chester County Planning are concerned about erosion and sedimentation control and revegetation. Chester County Planning states that the

²⁵ Table 1 of the EA provides an overview of the comments received during the scoping period and identifies the location within the EA where the comments are addressed. EA at 4, tbl. 1.

²⁶ Eastern Shore June 16, 2017 Comments responding to Chester County Planning at 2, 3.

county has developed a countywide stormwater management plan and that various townships have adopted municipal erosion control ordinances. Chester County Planning inquires about the depth of soil cover for the pipeline, especially where active agricultural uses occur. Franklin Township comments that it must review and approve pipeline construction plans for the Jennersville and Fair Hill Loops and that Eastern Shore had not corresponded with the township about this project.

32. The EA determined that the project will only have minor direct and indirect impacts on soils, including soil erosion and sedimentation.²⁷ Eastern Shore has adopted the Commission's *Wetland and Waterbody Construction and Mitigation Procedures (Procedures)* and *Upland Erosion Control, Revegetation, and Maintenance Plan (Plan)* for the project,²⁸ and has developed a project-specific *Erosion and Sedimentation Control Plan*. The *Procedures* and *Plan* provide measures for minimizing erosion of disturbed soils and transportation of sediments off the right-of-way and into sensitive resources (e.g., wetlands, waterbodies, and residential areas), which includes the use of erosion and sediment controls during construction and restoration.²⁹ As indicated in the EA, Eastern Shore is required to obtain appropriate township and county authorizations regarding the project-specific *Erosion and Sedimentation Control Plan* and obtain a Chester County general permit.³⁰ We affirm the conclusion in the EA that soil impacts will be minor and Eastern Shore will implement appropriate measures to minimize impacts during construction and restoration of the project.

²⁷ EA at 35-36.

²⁸ *Id.* at 9.

²⁹ For example, our *Procedures* require Eastern Shore to cross perpendicularly to the waterbody, *Procedures* § V(B)(3)(b); to control erosion and sedimentation runoff from the start of construction through successful stabilization and revegetation with site-specific plants, *id.* §§ V(B)(4), V(B)(10), V(C)(8), VI(B)(2); to remove only vegetation impeding construction, *id.* § VI(A)(2)-(3); to avoid disturbance to root systems and soils, *id.* § VI(B)(2)(f)-(g); and to prevent equipment-based damage to vegetation, *id.* §§ VI(B)(1)(c)-(d), VI(B)(2)(e), (j). Our *Plan* requires Eastern Shore to separate topsoil from subsoil and properly stabilize and store such soil throughout all construction activities, *Plan* § IV(B)(1); use temporary slope breakers, which varies depending upon the slope, *id.* § IV(F)(1); and, during restoration, ensure successful revegetation of soils disturbed by the project, *id.* § V(D)(1).

³⁰ EA at 25-28, tbl. 5.

33. In response to Franklin Township's comment, Eastern Shore provided documentation that Franklin Township received a notification about the project on March 3, 2017.³¹ We encourage Eastern Shore to continue to coordinate with Franklin Township and other counties and townships regarding the review of its *Erosion and Sedimentation Control Plan*.

34. Eastern Shore states that it has committed to use a minimum of four feet of soil cover.³² Eastern Shore must comply with the U.S. Department of Transportation regulations during construction and operation of the project to ensure that the depth of soil cover is adequate.

3. Groundwater

35. Chester County Planning, Chester County Water, and EPA express concerns about the impact on potable water supply wells within 150 feet of the construction area. The EA identifies public and private wells and details the private wells found within 150 feet of construction workplaces and determines that impacts would be temporary and minor.³³ The EA addresses the protection of water wells and includes Eastern Shore's commitment to, with landowner approval, conduct pre- and post-construction well yield and water quality testing on wells and to repair any well affected by construction.³⁴ The EA also indicates that if well water quality or yield are adversely impacted as a result of the project, Eastern Shore will provide a clean water source while the damaged well is restored to its former capacity and quality.³⁵ We have added Environmental Condition 22 in the appendix to this order requiring Eastern Shore to conduct, with the landowner's permission, pre- and post-construction monitoring of well yield and water quality and to repair any well affected by construction.

³¹ Eastern Shore June 16, 2017 Comments responding to Franklin Township.

³² See Eastern Shore Application Resource Report 1 at 1-12 (citing 49 C.F.R. part 192 (2017)); see also Eastern Shore June 16, 2017 Comments responding to Chester County Planning at 5.

³³ EA at 38-43, tbl. 8.

³⁴ See *id.* at 36-43; see also Eastern Shore June 16, 2017 Comments responding to Chester County Planning at 7-8.

³⁵ *Id.* at 43.

4. Surface Waters

36. EPA questions generally where Eastern Shore will use horizontal directional drill (HDD) crossings, how the decision to use that method was reached, and if HDD was considered as an alternative to any of the crossings Eastern Shore proposes to open-cut. EPA also comments that the *HDD Inadvertent Surface Release Contingency Plan* should be easily accessible. Eastern Shore explains that it decided to use HDDs where the geologic data, terrain features, and its prior experiences with crossings for other projects indicated that an open-cut crossing was not feasible.³⁶ Further, as illustrated in the discussion below, an HDD crossing is not always a preferable method for crossing a waterbody or wetland, due to construction constraints, timing, and other considerations, and the fact that there is a potential for greater impact should a failure result. We note that Eastern Shore's application included its *HDD Inadvertent Surface Release Contingency Plan*.³⁷ We agree with the conclusion in the EA that impacts on waterbodies will be short-term and minimized due to Eastern Shore's use of both HDD and dry-ditch crossing methods, and implementation of its project-specific *Erosion and Sedimentation Control Plan* as well as the Commission's *Procedures*.

37. Chester County Planning, Chester County Water, and EPA comment on the crossings of White Clay Creek, which is a National Wild and Scenic River, and recommend consultation with the National Park Service on the crossing methods. Commission staff met with Eastern Shore and the National Park Service during pre-filing to discuss crossing methods for White Clay Creek. As a result, Eastern Shore proposed dry-ditch construction methods for the White Clay Creek crossings.³⁸

38. The Wild and Scenic River Act prohibits the Corps from issuing a Clean Water Act section 404 permit where any impacts would directly and adversely affect the values of a designated Wild and Scenic River.³⁹ The National Park Service is charged with determining whether an agency's action would have a direct and adverse effect on the values for which a Wild and Scenic River was established.⁴⁰ As a result, the National

³⁶ Eastern Shore June 12, 2017 Comments responding to EPA at 2-3.

³⁷ Eastern Shore Application Resource Report 2 at Appendix 2-A. This filing is available at <https://elibrary.ferc.gov> under accession no. 20161230-5129.

³⁸ *See id.* at 14-16; 50-51.

³⁹ *See* 33 C.F.R. § 320.3(l) (2017) (describing the interaction of Clean Water Act section 404 and the Wild and Scenic Rivers Act section (7)(a)).

⁴⁰ *See* 16 U.S.C. § 1278 (2012).

Park Service makes its determination if a project will directly and adversely impact the designated river in conjunction with the Corps' Clean Water Act section 404 permitting process. Because consultation with the National Park Service is not yet complete and the Corps' section 404 permit has not been issued, we will include Environmental Condition 12 in the appendix to this order to ensure Eastern Shore completes consultation related to the White Clay Creek Wild and Scenic River prior to construction. Eastern Shore will be required to implement any changes in the method of crossing White Creek that result from the consultation or the section 404 permit.

39. Chester County Planning, Chester County Water, and EPA question whether Eastern Shore would reuse its hydrostatic test water for each looping segment and where the hydrostatic test water would be discharged. They also requested an estimate of the quantity and sources of water to be used for dust control measures. Eastern Shore responds that it has obtained the appropriate permits from PADEP and the Delaware River Basin Commission for the use and discharge of hydrostatic test water in Pennsylvania.⁴¹ Eastern Shore also states that it will not reuse test water from one segment to the other. The EA provides details regarding the various water sources, quantities required, and disposal methods for the hydrostatic test water and concludes that any impacts would be short-term and not-significant.⁴² For dust control measures, water would be applied to exposed soil areas based on weather conditions, as identified in Eastern Shore's *Fugitive Dust Control Plan*.⁴³ It is expected that water for dust control would be obtained from municipal supply sources. We agree with the conclusion in the EA that water use impacts from hydrostatic testing and dust control would be temporary and not significant.

5. Wetlands

40. Chester County Planning, Chester County Water, and EPA state that Eastern Shore should limit impacts on wetlands and ensure proper restoration and mitigation of impacted wetlands. EPA also recommends that the Commission consider wetland mitigation for impacts on forested wetlands. Eastern Shore will comply with our *Procedures* to minimize adverse impacts on wetlands; such impacts will not be

⁴¹ Eastern Shore June 16, 2017 Comments responding to Chester County Planning at 8-9. Eastern Shore also obtained a permit from the Maryland Department of the Environment for the Fair Hill Loop hydrostatic test water. Eastern Shore July 26, 2017 Update of Agency Consultation and Permits Required.

⁴² EA at 53-54, tbl. 11.

⁴³ Eastern Shore Application Resource Report 9 at Appendix 9-E.

significant.⁴⁴ In addition, all construction in wetlands will be conducted in compliance with the Corps' section 404 permit terms and conditions, including any required mitigation for loss or conversion of forested wetland. The EA concludes that if Eastern Shore complies with the construction and restoration methods described in the EA, in the *Plan and Procedures* and Eastern Shore's *Erosion and Sedimentation Control Plan*, the impacts on wetlands will not be significant.⁴⁵ We affirm the EA's conclusions.

6. Special Status Species

41. Chester County Water and EPA comment that Eastern Shore must engage in consultation with the Fish and Wildlife Service (FWS) to avoid or minimize impacts on the federally listed threatened bog turtle. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of their designated critical habitat.⁴⁶

42. To comply with section 7(a)(2), the agency proposing or permitting an action (i.e., the action agency) must first determine whether the action may affect a threatened or endangered species or its critical habitat.⁴⁷ If the action agency determines that the proposed action is likely to adversely affect a threatened or endangered species or its critical habitat, the agency must describe those impacts in a biological assessment and request to initiate formal consultation with FWS or the National Marine Fisheries Services (collectively, the consulting agency).⁴⁸ During formal consultation, the consulting agency responds by preparing a biological opinion, which advises the action agency whether the proposed action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.⁴⁹ If a

⁴⁴ EA at 54-59. For example, should Eastern Shore need to remove a tree within a wetland our *Procedures* require Eastern Shore to limit the removal of tree stumps to those stumps directly over the trenchline. *Procedures* at § (VI)(B)(2)(g).

⁴⁵ EA at 54-59.

⁴⁶ 16 U.S.C. § 1536(a)(2) (2012).

⁴⁷ 50 C.F.R. § 402.14(a) (2017).

⁴⁸ *Id.* The action agency can bypass formal consultation and engage in informal consultation, but only under certain circumstances. *See* 50 C.F.R. § 402.13 (2017) (describing the informal consultation process).

⁴⁹ 50 C.F.R. § 402.14 (g), (h) (2017).

proposed action is likely to result in jeopardy to a listed species, the consulting agency must suggest reasonable and prudent alternatives that avoid jeopardy.⁵⁰ The consulting agency may also issue an incidental take statement if it determines that the action will (1) not lead to jeopardy or that reasonable and prudent alternatives have been offered and (2) the taking of an endangered or threatened species is incidental to the agency action and will not lead to jeopardy.⁵¹ Following receipt of the biological opinion, the action agency may proceed with its action or issue its permit in conformity with the consulting agency's biological opinion.⁵²

43. The EA concludes that the project is likely to adversely affect the bog turtle, and that formal ESA section 7 consultation with FWS is required.⁵³ On May 16, 2017, Commission staff sent a letter to FWS requesting the initiation of formal section 7 consultation for the project's potential impacts on the bog turtle and, on August 8, 2017, Commission staff reinitiated formal consultation to reflect the change in construction methods, discussed below, to use the open-cut crossing method through Wetland 22, which contains bog turtle habitat. Formal consultation is ongoing.

44. On June 8, 2017, FWS conducted an onsite meeting with PADEP, the Pennsylvania Fish and Boat Commission, Eastern Shore, and Commission staff in order to discuss Eastern Shore's proposed HDD crossing of Wetland 22 as part of the Jennersville Loop.⁵⁴ All three resource agencies expressed concerns that, due to site-specific geologic and substrate conditions at and under this wetland, an inadvertent release of drilling fluid was likely and that substantial impacts on bog turtles could result.⁵⁵ The resource agencies requested that Eastern Shore consider an open-cut trench crossing of the wetland, rather than an HDD crossing. In the resource agencies' opinion, an open-cut crossing would likely have a lesser impact on bog turtles because it would take less time to complete and constitute a more manageable method of construction. In turn, this crossing method would minimize the impacts on the wetland and bog turtle habitat. Commission staff agreed that the HDD crossing of Wetland 22 could be problematic and that impacts on bog turtle wetlands could be reduced by use of an open-

⁵⁰ See 16 U.S.C. § 1536(b)(3)(A) (2012).

⁵¹ *Id.* § 1536(b)(4) (2012).

⁵² 50 C.F.R. § 402.15(a) (2017).

⁵³ EA at 77-80.

⁵⁴ June 8, 2017 Site Meeting Notes.

⁵⁵ *Id.*

cut crossing, provided that proper mitigation measures are implemented in accordance with FWS consultation.

45. On June 29, 2017, Eastern Shore filed a revised construction plan to cross Wetland 22 using an open-cut method rather than an HDD method.⁵⁶ In addition to committing to use FWS-recommended bog turtle protection measures identified in the EA,⁵⁷ Eastern Shore agreed to restrict the construction right-of-way through the wetland to 50 feet in width,⁵⁸ complete all work within 2 to 3 days, have a certified bog turtle surveyor on site, and monitor the location of turtles in the wetland using radio telemetry on previously tagged bog turtles. Eastern Shore also committed to consulting with FWS to identify possible offsite compensatory-mitigation measures.

46. While the proposed construction method has changed, Eastern Shore's use of the open-cut crossing method instead of HDD does not result in any significant environmental impacts and does not represent any unacceptable construction constraints. Eastern Shore's decision to use an open-cut construction method for the crossing of Wetland 22 will result in an increase of about 0.28 acre of wetland impact compared to installing the pipeline by HDD. However, Wetland 22 is an emergent wetland, and Eastern Shore's use of the mitigation measures in the *Procedures* would result in short-term impacts, with restoration of the wetland estimated to take one to two growing seasons. Wetland impacts would also be addressed by the Corps in its section 404 permit terms and conditions.

47. While the revised construction method would result in direct impact on bog turtle habitat, the work would be restricted to a small area and would be completed in a short time frame in accordance with any stipulations mandated by FWS in its biological opinion. Eastern Shore will also follow its *Bog Turtle Protection Plan-Jennersville Loop, Wetlands 4, 19, 22, 24, and 25*. Environmental Condition 14 in the appendix to this order requires completion of formal consultation under section 7 of the ESA before any construction could begin.

48. During the June 8 meeting, FWS alternatively identified a route realignment that would avoid the core bog turtle habitat in Wetland 22. This alternative route alignment

⁵⁶ Eastern Shore filed additional details regarding the revised construction methods on July 13, 2017.

⁵⁷ EA at 83-84.

⁵⁸ This represents a reduction of 25 feet compared with the 75-foot rights-of-way permitted under our *Procedures* for construction within wetlands. *Procedures* at § VI(A)(3)

would move the pipeline adjacent and to the east of Eastern Shore's proposed route and outside of the existing right-of-way.⁵⁹ The re-route would still cross a portion of Wetland 22 but, according to FWS, this alternative route alignment would be in a location that does not contain core bog turtle habitat. FWS stated that if Eastern Shore were to adopt the re-route, FWS could concur with a not likely to adversely affect determination and that no further section 7 consultation would be necessary. Eastern Shore responded, however, that the identified route realignment would create an additional permanent easement on the affected landowner's property, require a greater amount of tree clearing, disturb previously undisturbed land, and still result in impacts on bog turtles and bog turtle habitat.⁶⁰

49. We agree with FWS that a route realignment would reduce impacts on core bog turtle habitat and would potentially obviate the need for further consultation under the ESA. However, as discussed above, impacts on the bog turtle and its habitat resulting from construction of the proposed route can be reduced to an acceptable level by use of an open-cut crossing of Wetland 22, provided that proper mitigation measures are implemented in accordance with FWS consultation. Moreover, Eastern Shore has already obtained the necessary property rights for the proposed alignment, thus eliminating any potential need for the exercise of eminent domain. Given this, we decline to require the re-route identified by FWS.

50. Although we are not authorizing the FWS-recommended re-route at this time, route variations are routinely addressed as variances according to the procedures established in Environmental Condition 5, which is included in the appendix to this order. Thus, if Eastern Shore were to re-evaluate its decision about the re-route and obtain landowner permission (as well as fulfill the other provisions of Environmental Condition 5), Eastern Shore could request a variance for approval to realign the crossing of Wetland 22.

7. Land Use

51. Chester County Planning requests that the Commission mandate that Eastern Shore file with the Secretary of the Commission (Secretary) evidence of landowner concurrence of construction work within 10 feet of a residential structure. We routinely require such notification in certificate proceedings and the EA contains such a recommendation. Thus, Environmental Condition 15 in the appendix to this order

⁵⁹ This realignment would divert from the existing easement for about 500 feet, and would be up to 100 feet away from the existing easement.

⁶⁰ Eastern Shore July 13, 2017 Responses to data request.

requires Eastern Shore, prior to construction, to file such landowner concurrences with the Commission.

52. Mr. Dick Whipple comments that the project would cross the Geoghegan Trail, which is located on Chester County property in Franklin Township, and that construction activities should be coordinated with trail users and all appropriate restoration be undertaken. Eastern Shore indicates that it would coordinate with Chester County and trail users regarding the construction activity and would ensure that appropriate restoration is carried out.⁶¹ We encourage cooperation between Eastern Shore and users of the Geoghegan Trail during construction and restoration of the 2017 Expansion Project and, at this time, will not require any additional environmental conditions.

8. Air Quality

53. PADEP agrees that the project's direct and indirect emissions would not trigger General Conformity thresholds in either Lancaster or Chester County. However, PADEP comments that the supporting documentation, such as the emission methodology, was not sufficiently detailed for it to definitively agree with the accuracy of the emission estimates presented in the EA. On June 21, 2017, Eastern Shore provided supporting explanations to the methodologies used. PADEP responded, stating that it reviewed the additional information and explanation provided by Eastern Shore and re-confirms that the direct and indirect emissions from the project would be below General Conformity thresholds.⁶² We agree with the conclusions presented in the EA that a General Conformity determination is not required.⁶³

9. Noise

54. Chester County Planning states that while Chester County does not have a noise ordinance, Franklin, Highland, Londonderry, New London, and West Sadsbury townships do have noise ordinances and that Eastern Shore should adhere to these ordinances for any HDD crossings that might occur in these communities. Eastern Shore responds that HDD crossings are planned for Franklin and West Sadsbury Townships, and that it will follow all noise ordinance regulations for both townships. Environmental Condition 19 in the appendix to this order also requires Eastern Shore to file with the Secretary an HDD noise analysis before such construction can begin.

⁶¹ Eastern Shore June 29, 2017 Comments responding to Mr. Dick Whipple.

⁶² PADEP July 11, 2017 Comments at 2.

⁶³ EA at 127.

10. Alternatives

55. EPA comments on the evaluation of route variations between mileposts 3.8 and 5.0 of the Jennersville Loop. EPA (1) requests that the Commission clarify the distance Alternative 1 would parallel White Clay Creek and explain any impacts associated with this alternative; (2) questions whether FWS reviewed the determination in the EA's Jennersville Loop alternatives discussion that there is no bog turtle habitat present along this portion of the main Jennersville Loop route; (3) questions the conclusion in the EA that Alternative 2 would not provide an environmental benefit compared to the proposed route; and (4) asks whether other route alternatives were considered that would reduce the number of crossings of White Clay Creek and its tributaries.

56. The EA's analysis focused on two alternatives for the Jennersville Loop between approximately mileposts 3.8 to 5.0.⁶⁴ Alternative 1 would parallel White Clay Creek for a distance of approximately 3,500 feet, with the construction work area and permanent right-of-way ranging from approximately 100 to 250 feet from the waterbody. With respect to EPA's question concerning potential bog turtle habitat along this portion of the proposed route, Eastern Shore indicates that FWS reviewed and agreed with the results of Eastern Shore's survey showing that Wetland 12, located along the proposed route for the Jennersville Loop, did not contain bog turtle habitat.⁶⁵ The EA found that proposed route and the crossing of Wetland 12 to be acceptable and that Alternative 1 would not be environmentally preferable to the proposed route because it would affect a greater amount of wetlands, including two wetlands containing populations of bog turtle. We affirm the finding that the proposed Jennersville Loop route is preferable to Alternative 1.

57. Staff's evaluation of Alternative 2 in the EA concludes that this route variation would be 0.1 mile longer than the proposed route, would result in 1.3 miles of new right-of-way on private property that does not presently contain a pipeline easement, and would not reduce the number of crossings of White Clay Creek.⁶⁶ Thus, the EA concludes that Alternative 2 did not present an environmental advantage over the proposed route, and staff did not recommend it. We agree with the conclusions in the EA.

58. Table 10 of the EA shows that the Jennersville Loop crosses the tributaries of either Big Elk Creek or White Clay Creek a total of 16 times.⁶⁷ Thirteen of the crossings

⁶⁴ *Id.* at 164.

⁶⁵ Eastern Shore June 12, 2017 Comments responding to EPA at 2-3.

⁶⁶ EA at 165-67.

⁶⁷ *Id.* at 45-48.

are minor stream crossings that Eastern Shore will complete by using dry-ditch methods. The remaining three crossings are intermediate crossings, which Eastern Shore will complete by using an HDD. An alternative route might result in fewer waterbody crossings, but any alternative that would limit the number of waterbody crossings would likely require the construction of greenfield pipeline. The proposed Jennersville Loop consists of looping Eastern Shore's existing pipelines, and the alignment of the loop is generally within existing easements. The looping of existing systems is an accepted strategy for reducing environmental impacts compared to the development of new greenfield pipelines, which require new and additional rights-of-way. In addition, all surface waterbodies crossed by the project would be restored to pre-construction conditions to ensure that no surface flow capacity is lost.⁶⁸ Eastern Shore would follow its *Erosion and Sedimentation Control Plan*, *Stormwater Pollution Prevention Plan*, and *Spill Containment and Countermeasures Plan*, as well as our *Procedures* and the Corps' section 404 permit terms and conditions during construction and revegetation to ensure that impacts on surface waters would be short-term and not significant.

59. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Eastern Shore's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

60. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶⁹

⁶⁸ *Id.* at 53.

⁶⁹ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988) (state regulation that interferes with the Commission's regulatory authority over the transportation of natural gas is preempted); and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

61. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Eastern Shore, authorizing it to construct and operate the proposed 2017 Expansion Project, as described more fully herein and in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Eastern Shore's:

(1) completion of construction and modification of the proposed facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

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

(C) Eastern Shore shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(D) Eastern Shore's proposed incremental firm reservation charges are approved.

(E) Eastern Shore's proposal to use its existing system commodity charges is approved.

(F) Eastern Shore's proposal to use its existing fuel retention percentage is approved.

(G) Eastern Shore shall file actual tariff records with the incremental rates and changes to its tariff no earlier than 60 days, and no later than 30 days, prior to the date the expansion capacity is placed in service.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

1. Eastern Shore shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) for the project and as identified in the EA, unless modified by the order. Eastern Shore must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to (1) issue (or deny) any approvals or authorizations necessary to carry out the conditions of this order, and (2) take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority may include:
 - a. the modification of conditions of the order; and
 - b. the imposition of additional measures, **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**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations for the project shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Eastern Shore shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of Environmental Conditions of the order or site-specific clearances

must be written and must reference locations designated on these alignment maps/sheets.

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

5. Eastern Shore shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Commission's *Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Eastern Shore shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Eastern Shore must file revisions to the plan as schedules change. The plan shall identify:

- a. how Eastern Shore will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
 - b. how Eastern Shore will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Eastern Shore will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Eastern Shore will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Eastern Shore shall employ at least one EI per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Eastern Shore shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Eastern Shore's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, and work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Eastern Shore from other federal, state, or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.
9. Eastern Shore must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Eastern Shore must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Eastern Shore must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the respective facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Eastern Shore has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction of the Jennersville Loop**, Eastern Shore shall complete its consultation with the National Park Service and the Corps and file with the Secretary, for review and written approval of the Director of OEP, its final construction and restoration plan for the crossings of the tributaries of White Clay Creek, and National Park Service comments on that plan.
13. **Prior to construction**, Eastern Shore shall file with the Secretary its Migratory Bird Conservation Plan along with documentation of consultation with the FWS on the plan.
14. Eastern Shore **shall not begin construction activities until**:
 - a. Commission staff completes ESA section 7 consultation with the FWS regarding the bog turtle; and
 - b. Eastern Shore has received written notification from the Director of the OEP that construction or use of mitigation may begin.
15. **Prior to construction**, Eastern Shore shall file with the Secretary evidence of consultation and/or concurrence of landowners regarding the site-specific residential construction plans for any residence within 10 feet of the construction workspaces for the project.
16. Eastern Shore shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project, and restoration of the rights-of-way. **Prior to construction of the project**, Eastern Shore shall mail the complaint procedures to each landowner whose property would be crossed.

- a. In its letter to affected landowners, Eastern Shore shall:
 - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - ii. instruct the landowners that if they are not satisfied with the response, they should call Eastern Shore's Hotline (the letter should indicate how soon to expect a response); and
 - iii. instruct the landowners that if they are still not satisfied with the response from Eastern Shore's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
 - b. In addition, Eastern Shore shall include in its weekly status report for the project a copy of a table that contains the following information for each problem/concern:
 - i. the identity of the caller and date of the call;
 - ii. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - iii. a description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
17. Eastern Shore **shall not begin construction** of the project facilities and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
- a. Eastern Shore files with the Secretary:
 - i. remaining cultural resources survey report(s) and addendum(s);
 - ii. site evaluation report(s) and avoidance/treatment plan(s), as required; and
 - iii. comments on the cultural resources reports, addendums, and plans from the Pennsylvania, Maryland, and Delaware State Historic Preservation Offices, as applicable;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. Commission staff reviews and the OEP approves the cultural resources reports and plans, and notifies Eastern Shore in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in

bold lettering: “**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**”

18. **Prior to construction of the project**, Eastern Shore shall file with the Secretary, for review and written approval by the Director of OEP, a Fugitive Dust Control Plan. The plan shall specify the precautions that Eastern Shore will take to minimize fugitive dust emissions from the pipeline construction activities, including additional mitigation measures to control fugitive dust emissions of particulate matter with an aerodynamic diameter less than or equal to 2.5 microns. The plan shall clearly explain how Eastern Shore will implement measures, such as:
- a. watering the construction workspace and access roads;
 - b. providing measures to limit track-out onto the roads;
 - c. identifying the speed limit that Eastern Shore will enforce on unsurfaced roads;
 - d. covering open-bodied haul trucks, as appropriate;
 - e. clarifying that the EI has the authority to determine if/when water or a palliative needs to be used for dust control; and
 - f. clarifying the individuals with the authority to stop work if the contractor does not comply with dust control measures.
19. **Prior to any HDD construction for the project**, Eastern Shore shall file with the Secretary an HDD noise analysis identifying the existing and projected noise levels at each noise-sensitive area (NSA) within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed a day-night noise level of 55 decibels on the A-weighted scale (L_{dn} of 55 dBA) at any NSA, Eastern Shore shall file with the noise analysis a mitigation plan to reduce the projected noise levels for the review and written approval by the Director of OEP. During drilling operations, Eastern Shore shall implement the approved plan, monitor noise levels, include these noise levels in its weekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an L_{dn} of 55 dBA at the NSAs.
20. Eastern Shore shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Daleville Compressor Station in service. If a full load condition noise survey is not possible, Eastern Shore shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within six months**. If the noise attributable to the operation of all of the equipment at the Daleville Compressor Station under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at the nearby NSAs, Eastern Shore shall file a report on what changes are needed and shall install the additional noise

controls to meet the level **within one year** of the in-service date. Eastern Shore shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

21. Eastern Shore shall file a noise survey with the Secretary **no later than 60 days** after placing the proposed Millsboro Pressure Control Station in service. If the total noise attributable to the proposed Millsboro Pressure Control Station exceeds an L_{dn} of 55 dBA at any NSA, Eastern Shore shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. Eastern Shore shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
22. Eastern Shore shall conduct, with the well-owner's permission, pre- and post-construction monitoring of well yield and water quality for all private water wells within 150 feet of construction work areas. **Within 30 days** of placing the facilities in service, Eastern Shore shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

Document Content(s)

CP17-28-000.DOCX.....1-31