

149 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Texas Eastern Transmission, LP

Docket No. CP14-68-000

ORDER ISSUING CERTIFICATE

(Issued December 2, 2014)

1. On January 31, 2014, Texas Eastern Transmission, LP (Texas Eastern) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to construct and operate pipeline, compression, and metering facilities in Ohio and modify compression facilities in Ohio, Kentucky, Mississippi, and Louisiana (Ohio Pipeline Energy Network Project or OPEN Project). As discussed below, the Commission will grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Texas Eastern is a natural gas company, as defined by section 2(6) of the NGA, that transports natural gas in interstate commerce. Texas Eastern's transmission system extends from Texas, Louisiana, and the Gulf of Mexico, through Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

3. Texas Eastern proposes to: (1) construct and operate approximately 76 miles of 30-inch diameter lateral pipeline and appurtenant facilities in Ohio to interconnect with Texas Eastern's existing mainline facilities (the Ohio Extension); and (2) modify compressors and meter stations along Texas Eastern's mainline in Ohio, Kentucky, Mississippi, and Louisiana to provide for reverse flow capabilities on the mainline from its interconnection with the Ohio Extension to its interconnections with the Gillis Compressor Station in Beauregard Parish, Louisiana, and Egan Hub Storage, LLC's facilities in Acadia Parish, Louisiana. The proposed facilities are designed to provide up to 550,000 dekatherms (Dth) per day of firm transportation service from receipt points in Ohio to delivery points in the Gulf Coast area. Specifically, Texas Eastern proposes to:

- construct and operate approximately 75.8 miles of pipeline from milepost (MP) 0.0 in Hanover Township, Columbiana County, Ohio, to approximate MP 75.8 in Switzerland Township, Monroe County, Ohio (Ohio Extension);

- install two 9,400 horsepower (hp) gas turbine compressor units at the new Colerain Compressor Station at approximate MP 49.9 on the Ohio Extension in Colerain Township, Belmont County, Ohio;¹
- construct and operate the Kensington Receipt Meter and Regulator (M&R) Station, a dual 12-inch and single 3-inch ultrasonic receipt M&R station and launcher assembly at MP 0.0 on the Ohio Extension at the M3 Midstream LLC Kensington Processing Plant;
- construct and operate the Brush Creek M&R Station, which includes:
 - (a) the Dominion Transmission, Inc. Interconnect Delivery M&R Station (a single 8-inch and single 3-inch ultrasonic delivery M&R station with tee tap at approximate MP 13.2 on the Ohio Extension in Jefferson County, Ohio), along with a pig launcher assembly, approximately 1,000 feet of 10-inch diameter pipe, and a pig receiver assembly, and
 - (b) the Chesapeake Receipt M&R Station, a dual 12-inch and single 3-inch ultrasonic receipt M&R station with tee tap at approximate MP 13.2 on the Ohio Extension;
- construct and operate the Salem Township Receipt M&R Station, a dual 10-inch and single 3-inch ultrasonic receipt M&R station with tee tap at approximate MP 27.0 on the Ohio Extension in Jefferson County, Ohio;
- construct and operate a quadruple 12-inch-run regulating station at approximate MP 74.1 on the Ohio Extension in Switzerland Township, Monroe County, Ohio, upstream of the tie-ins for Texas Eastern's Lines 10, 15, 25, and 30 and tap valves to tie into Texas Eastern's Lines 10 and 15;

¹ The installation of two 9,400 hp compressor units at the Colerain Compressor Station will meet the threshold of total gas turbine station capacity of at least 15,000 hp discussed in the Interstate Natural Gas Association of America White Paper entitled "*Waste Energy Recovery Opportunities for Interstate Natural Gas Pipelines*" issued in February 2008 (INGAA White Paper). However, Texas Eastern did not evaluate the technical feasibility and commercial viability of installing and operating waste heat recovery facilities in conjunction with its proposed modifications at compression stations. We encourage Texas Eastern to monitor this compressor station, and should the station meet the waste heat recovery parameters in the INGAA White Paper, Texas Eastern should post such information on its electronic bulletin board.

- install three 30-inch tee taps, one each near MPs 5.4 in Franklin Township, Columbiana County, Ohio; MP 21.4 in Ross Township, Jefferson County, Ohio; and MP 42.9 in Smithfield Township, Jefferson County, Ohio, all on the Ohio Extension, to accommodate potential future receipt tie-ins;
- install tap valves to tie into Texas Eastern Lines 25 and 30 at approximate MP 75.8 on the Ohio Extension in Switzerland Township, in Monroe County, Ohio;
- install three 30-inch mainline valves on the Ohio Extension, one each at approximate MP 16.0 and approximate MP 34.3 in Brush Creek and Wayne Townships, respectively, in Jefferson County, Ohio; and at approximate MP 69.0 in York Township, Belmont County, Ohio; and
- modify facilities to accommodate reverse flow (or bi-directional flow) capability along Texas Eastern's existing mainline at the following compressor stations:
 - (a) Berne Compressor Station in Monroe County, Ohio;
 - (b) Tompkinsville Compression Station in Monroe County, Kentucky;
 - (c) Kosciusko Compressor Station in Attala County, Mississippi;
 - (d) Clinton Compressor Station in Hinds County, Mississippi;
 - (e) Union Church Compressor Station in Jefferson County, Mississippi; and
 - (f) St. Francisville Compressor Station in West Feliciana Parish, Louisiana.

4. Texas Eastern held open seasons from April 27 through May 18, 2012, and October 14 through October 25, 2013, and executed binding precedent agreements with four shippers for 100 percent of the firm transportation service to be made possible by the project. The four shippers are Chesapeake Energy Marketing, Inc., (350,000 Dth per day), Rice Drilling B LLC (50,000 Dth per day), CNX Gas Company LLC (50,000 Dth per day), and Total Gas & Power North America, Inc. (100,000 Dth per day). The shippers have agreed to pay negotiated rates for primary terms of 15 or 20 years.

5. Texas Eastern estimates that the proposed OPEN Project will cost approximately \$468.5 million, with the cost of the Ohio Extension estimated to be \$431.9 million and the cost of reversing the flow of the mainline from Ohio to Louisiana estimated to be \$36.6 million.

6. Texas Eastern proposes an incremental firm recourse rate for the full transportation path on the OPEN Project, which includes the 76-mile Ohio Extension and transportation on the mainline from Ohio to Louisiana, and separate incremental recourse rates for open-access firm and interruptible transportation services solely on the Ohio Extension.

7. Texas Eastern derived its proposed incremental recourse reservation charge for the project's services from the applicable incremental costs of service and billing determinants. Texas Eastern calculated the incremental costs of service using a 12.13 percent rate of return and its existing onshore 1.22 percent depreciation rate.² Texas Eastern states that the calculated incremental monthly reservation recourse charges for the OPEN Project and the Ohio Extension will be \$16.915 and \$15.345 per Dth, respectively.

II. Notice, Interventions, Comments, and Answers

8. Notice of Texas Eastern's application was published in the *Federal Register* on February 14, 2014 (79 Fed. Reg. 10,137). The parties listed in Appendix A filed timely, unopposed motions to intervene.³ The parties listed in Appendix B filed comments supporting the project.

9. The Allegheny Defense Project (Allegheny) filed a late motion to intervene. This movant has demonstrated an interest in this proceeding. The untimely motion to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motion to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

10. The Municipal Defense Group, an intervening group of Texas Eastern's distributor-customers, filed comments regarding project benefits. Allegheny, a non-governmental organization, filed comments regarding environmental impacts. Ralph W. Jones, an intervenor who owns land next to the proposed compressor station in Belmont County, Ohio, raises concerns regarding property values, easements, and compressor station site selection. The comments are addressed below or in the environmental assessment (EA).

² The derivation and support for the initial recourse rates are detailed in Exhibit P of Texas Eastern's Application.

³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2014).

III. Discussion

11. Since Texas Eastern proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁴

A. Application of the Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁵ 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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

14. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without

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

⁵ *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).

relying on subsidization from its existing customers. The Commission has determined that generally where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.⁶ That is the case here. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

15. We also find that the proposal will not degrade service to Texas Eastern's existing customers. The project will allow Texas Eastern to provide additional transportation services to its customers while continuing to meet existing firm obligations. In addition, there will be no adverse impact on other pipelines in the region or their captive customers because the proposal is not intended to replace the existing customers' service on other pipelines. Also, no pipeline company has protested Texas Eastern's application.

16. As discussed in the EA, construction activities would temporarily affect 1,563.6 acres of land, 1,064.6 acres of which would revert to preconstruction conditions and uses. In order to minimize impacts on landowners, Texas Eastern will construct the proposed facilities on existing rights-of-way and previously disturbed property to the extent practicable. The new compressor station is proposed on a 32.5 acre site in a rural open area surrounded by scattered forest. The compressor station modifications will take place within the fence lines of existing compressor station facilities. Accordingly, we find that Texas Eastern has designed the project to minimize adverse impacts on landowners and surrounding communities.⁷

17. The Municipal Defense Group contends that the benefits of the project to existing shippers are limited.⁸ The Municipal Defense Group asserts that Texas Eastern would not permit existing shippers to swap their primary receipt points for the new capacity because that would leave existing capacity stranded. According to the Municipal Defense Group, existing customers could only purchase additional contract demand quantities. In addition, the Municipal Defense Group contends that the incremental shippers are likely to use the new capacity at a high load factor because they are producers desiring that their gas gets to market. The Municipal Defense Group contends that, because existing shippers with no new capacity requirements could not obtain

⁶ *E.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

⁷ Concerns raised during scoping regarding potential impacts on property values, easements, and compressor station siting are addressed in the EA.

⁸ Each member of the Municipal Defense Group is a city or political subdivision of a state and is a municipality as defined by section 2(3) of the NGA. Each member also owns or operates distribution systems and purchases transportation and, in some cases, storage services from Texas Eastern.

primary point rights to the new capacity, any benefit to them is minimal and is barely relevant to a finding that the project is in the public convenience and necessity.

18. Texas Eastern is not required to offer existing customers the right to change primary delivery points. If Texas Eastern does offer such an option, it may charge for any additional costs it incurs to provide that change. The OPEN Project will create capacity for the transportation of market area production and will make additional supply options available for shippers connected to Texas Eastern's system. In addition, since Texas Eastern is proposing incremental rates for OPEN Project service, existing shippers will not pay for project costs – project costs will be recovered only from the shippers who contract for the capacity of the project.

19. The proposed OPEN Project will increase the capacity of Texas Eastern's system in order to transport new gas production from receipt points in Ohio to delivery points in the Gulf Coast area. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of Texas Eastern's proposal, subject to the conditions discussed below.

B. Rates

OPEN Project Recourse Rates

20. Texas Eastern submitted a cost of service and rate design study showing the derivation of the OPEN Project recourse rate (for service utilizing the entire OPEN Project) based on a capital cost of \$468.5 million, an annual cost-of-service of \$111.6 million, and billing determinants of 550,000 Dth per day. Texas Eastern proposes an incremental recourse reservation charge of \$16.915 per Dth. This rate is based on Texas Eastern's existing onshore transmission system depreciation rate of 1.22 percent, a return-on-equity of 12.75 percent, and an overall rate of return of 12.13 percent, which were derived from Texas Eastern's cost of service settlement, as amended in Docket Nos. RP98-198-000, *et al.*⁹ For interruptible services on the OPEN Project facilities, Texas Eastern proposes to use its generally-applicable system rate.

21. Consistent with its other firm transportation services, Texas Eastern proposes to track and recover electric power costs and fuel use (including lost and unaccounted-for fuel) associated with providing service on the OPEN Project. Texas Eastern states that it performed an analysis of the incremental fuel and power costs associated with the OPEN

⁹ *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

Project facilities.¹⁰ Based on the study, Texas Eastern states that fuel costs for the OPEN Project will consist of both incremental fuel used for service on the Ohio Extension and the fuel and electric power costs associated with reversed flow on the mainline. Texas Eastern has calculated and included an applicable electric power charge and fuel shrinkage percentages to recover these costs. The electric power rate for the OPEN Project is derived from applicable mainline costs only because there is no electric compression on the Ohio Extension. Texas Eastern states that it will adjust its electric power and fuel shrinkage percentages over time to ensure that existing customers are not subsidizing the costs of the OPEN Project.

22. Texas Eastern's proposed incremental recourse rates for the OPEN Project are higher than the generally-applicable system rates contained in Texas Eastern's tariff for firm transportation service from Zones WLA to M2.¹¹ Thus, we will approve the proposed OPEN Project's incremental recourse rates. In addition, we have reviewed Texas Eastern's analysis of the incremental fuel and electric power costs associated with the OPEN Project and find that its proposals in regard to the fuel and electric power surcharges are reasonable.

Ohio Extension Recourse Rates

23. For service rendered exclusively on the Ohio Extension, Texas Eastern proposes separate rates under Rate Schedules FT-1 and IT-1, which are rate schedules designed specifically for this service. Customers under these rate schedules will have the right to ship on a firm or interruptible firm basis on the Ohio Extension, but not elsewhere on the existing Texas Eastern system unless they have capacity under additional transportation services on the mainline.

24. Texas Eastern proposes an incremental Ohio Extension recourse monthly reservation charge under Rate Schedule FT-1 of \$15.345 per Dth. The Ohio Extension recourse rate is based on the same depreciation rate and return on equity as those used in developing its proposed reservation charge for the OPEN Project. Texas Eastern submitted a cost study that demonstrated an expected capital cost for the Ohio Extension of \$431.9 million.¹² The Ohio Extension recourse rate for Rate Schedule FT-1 is based

¹⁰ For the calculation of the rates, *see* Exhibit Z-2 of the Application.

¹¹ There is no existing forward-haul rate on the Texas Eastern system from Ohio to Louisiana. For this analysis, Texas Eastern's combined system rate from Zones WLA to M2 (\$10.2670) was used for the sake of comparison.

¹² The capital cost of \$431.9 million includes costs associated with the 76 miles of new 30-inch diameter pipeline and related facilities in Ohio, but not the costs of

(continued...)

on an annual cost of service of \$101.3 million and billing determinants of 550,000 Dth per day.

25. Texas Eastern derives its Ohio Extension interruptible service rate of \$0.5045 per Dth under Rate Schedule IT-1 by using the 100 percent load factor derivative of its proposed Ohio Extension firm recourse rate under Rate Schedule FT-1. Texas Eastern proposes to credit revenues from Rate Schedule IT-1 for the Ohio Extension to: (1) Rate Schedule FT-1 OPEN Project shippers paying the maximum recourse rate; (2) Rate Schedule FT-1 Ohio Extension shippers paying the maximum recourse rate; and (3) negotiated rate shippers with contracts that specifically provide for eligibility of credits.

26. Consistent with its proposal for the OPEN Project, Texas Eastern performed an analysis of incremental fuel requirements for the Ohio Extension to ensure that existing customers do not subsidize these costs. Texas Eastern states that there is no electric power cost associated with service on the Ohio Extension. Based on the analysis, Texas Eastern states that fuel costs for the Ohio Extension will be based on the incremental fuel used for service at a single compressor station on the 76-mile long lateral, as well as lost and unaccounted-for fuel.¹³ Texas Eastern states that it will track changes in incremental fuel and adjust its shrinkage as appropriate over time.

27. We find that the information provided adequately supports Texas Eastern's rate proposal. Consistent with our holdings in other proceedings where Texas Eastern proposed a separate incremental rate for a new lateral,¹⁴ we will approve the proposed Ohio Extension recourse rates and applicable surcharges for Rate Schedules FT-1 and IT-1.

Reporting Incremental Costs and Revenues

28. To ensure that costs are properly allocated between Texas Eastern's existing shippers and the incremental services proposed in this proceeding, we will require Texas Eastern to keep separate books and accounting of costs attributable to the proposed incremental services. The books should be maintained with applicable cross-references,

compressor and meter station modifications required for the reverse flow capabilities on the mainline.

¹³ For the calculation of the rates, *see* Exhibit Z-2 of the Application.

¹⁴ *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009) and *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 (2012), *order amending certificates*, 145 FERC ¶ 61,016 (2013).

as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710 on incremental facilities. Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.¹⁵

Pro Forma Tariff Records

29. Texas Eastern proposes *pro forma* tariff records incorporating changes to rates, rate schedules, and its General Terms & Conditions (GT&C) for the implementation of the open-access service provided by the OPEN Project and the Ohio Extension. The tariff records also require the crediting of revenues under Rate Schedule IT-1 for the Ohio Extension and specify the rights to secondary points on the Ohio Extension. The Commission finds the changes, as provided for by the *pro forma* tariff records, acceptable and directs Texas Eastern to file actual tariff records not less than 30 days, nor more than 60 days, prior to the in-service date of the OPEN Project and Ohio Extension.

Non-Conforming Service Agreements

30. Texas Eastern requests that the Commission address a non-conforming provision in certain transportation service contracts. The non-conforming language provides that Texas Eastern will limit the receipt point operating pressure for two of the OPEN Project shippers to deliver into the Ohio Extension.¹⁶

31. Specifically, Texas Eastern and the shippers agree that the operating pressures required for the shipper to deliver into the Ohio Extension at the primary points of receipt shall not exceed: (1) 1,000 pounds per square inch gauge (psig) for all such receipt points north of a specified compressor station on the Ohio Extension; and (2) 1,200 psig for all such receipt points south of such proposed compressor station. Texas Eastern states that this provision provides the OPEN Project shippers with more operational certainty as they construct, or cause to be constructed, upstream facilities to be connected to the Ohio Extension, which currently has no operating history. Texas Eastern states that this provision does not present a risk of undue discrimination because it reflects the unique circumstances of the OPEN Project shippers, and is needed to ensure that the OPEN Project is constructed.

¹⁵ 18 C.F.R. § 154.309 (2014).

¹⁶ In response to a staff data request, Texas Eastern filed the non-conforming language on May 8, 2014.

32. We find that the incorporation of this non-conforming provision will constitute a material deviation from Texas Eastern's *pro forma* service agreement. However, in other proceedings, we have found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.¹⁷ As a result, we find that the non-conforming provision identified by Texas Eastern is permissible.

33. At least 30 days, but not more than 60 days, before providing service to customers under non-conforming contracts, Texas Eastern must file an executed copy of each non-conforming agreement disclosing and reflecting all non-conforming language as part of Texas Eastern's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.¹⁸

C. Environment

34. On June 21, 2013, the Commission staff began its environmental review after granting Texas Eastern's request to use the Commission's pre-filing process for the OPEN Project and assigned Docket No. PF13-15-000. As part of the pre-filing review, staff participated in open houses sponsored by Texas Eastern in St. Clairsville, Bellaire, Bloomingdale, and Hanoverton, Ohio, on July 29 through August 1, 2013, to explain our environmental review process to interested stakeholders.

35. On August 29, 2013, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the Federal Register¹⁹ and mailed to interested parties, including federal, state, and local government officials; agency representatives; conservation organizations; Native American tribes; local libraries and newspapers; and affected property owners.

36. Affected landowners, concerned citizens, government agencies, and other organizations filed comments responding to the NOI. Commission staff also held two public scoping meetings on September 16 and 17, 2013, in Richmond and St. Clairsville, Ohio, to give the public another opportunity to learn more about the project and comment on environmental issues that should be addressed in the Environmental Assessment (EA). The primary issues raised during the scoping process include the project's purpose and need; requests for an Environmental Impact Statement (EIS) rather than an EA; impacts

¹⁷ See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008) and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

¹⁸ 18 C.F.R. § 154.112 (2014).

¹⁹ 78 Fed. Reg. 54,886 (September 6, 2013).

on sensitive or protected areas; potential impacts on groundwater, surface water, soil, and wildlife; construction and operational safety; and impacts on nearby residences.

37. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an EA with the U.S. Fish and Wildlife Service (FWS) participating as a cooperating agency. The EA addresses geology and soils; water resources; fisheries and wetlands; vegetation and wildlife; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. The EA addressed all substantive issues raised during the scoping process.

38. On August 22, 2014, the EA was issued for a 30-day comment period, mailed to all stakeholders on the Commission staff's environmental mailing list, and placed into the public record of this proceeding. On October 20, 2014, Texas Eastern filed the hellbender and freshwater mussel surveys that were recommended in the EA; therefore Environmental Conditions 16 and 17 are modified in this order to reflect the remaining requirement to file agency comments on those surveys, prior to construction. The FWS, the U.S. Environmental Protection Agency (EPA), Allegheny, and two landowners filed comments on the EA, and Texas Eastern filed responses. This order discusses substantive comments that require clarification to issues addressed in the EA.

FWS Concerns

39. The FWS filed comments regarding the northern long-eared bat, a species proposed for listing under the Endangered Species Act (ESA). As discussed in section B.4.1 of the EA, Texas Eastern has agreed to restrict tree clearing to the FWS-recommended timing window (October 1 to March 31) to minimize potential impacts on the northern long-eared bat. FWS requests that adherence to the seasonal clearing window become mandatory only if the northern long-eared bat becomes officially listed. The FWS expects a final listing decision no later than April 2, 2015. This could overlap Texas Eastern's construction schedule, which is planned to begin in February 2015 and extend into November 2015. The Commission staff will confer with the FWS and complete any necessary Section 7 ESA consultation with the FWS should the listing become effective during project construction. Based on the requirement that Texas Eastern adhere to the clearing window, and Texas Eastern's commitments to do so, we concur with the EA's conclusion that adverse effects on the Northern long-eared bat are unlikely.

40. The FWS recommends that bat habitat, including any wooded areas or tree lined corridors, be saved wherever possible on a voluntary basis. As discussed in section B.3.1 of the EA, the project area consists of hilly terrain with extensive forested areas. Project construction would disturb approximately 612.3 acres of upland and wetland forest, of which 225.8 would be permanently cleared along the pipeline right-of-way and aboveground facility sites. However, Texas Eastern has minimized the potential impacts of its project by locating about 38 percent, or 29.1 miles, of the proposed OPEN pipeline

route adjacent to existing electric transmission line and pipeline corridors to minimize forest tree clearing and reduce impacts on interior forest tracts to the extent practicable. We concur with the EA's conclusions that overall, impacts on forest areas would not be significant.

EPA Concerns

41. The EPA concurs with several of the staff's recommendations and mitigation measures described in the EA and requests that the Commission impose additional conditions to further minimize construction impacts. The EPA supports Texas Eastern's commitment to fund a third-party compliance program during construction of the project and requests that the commitment be further memorialized as a condition in this order. We note that Environmental Condition 1 in this order requires Texas Eastern to construct the project as described in its application and supplements and as identified in the EA. Thus, the commitment is a requirement of this order and additional conditions are unnecessary. Environmental Condition 6 also requires that Texas Eastern include in its Implementation Plan how it will comply with its mitigation commitments, which include the third-party compliance program.

42. The EPA recommends that Texas Eastern use in-stream sediment control structures, such as silt curtains, during construction of surface waterbody crossings to reduce downstream sediment flow. Texas Eastern filed a response stating that installing silt curtains is unnecessary for the currently-proposed waterbody crossing methods. We concur. As discussed in section B.2.2 of the EA, a majority of the waterbodies that the OPEN Project will cross are shallow, intermittent, and ephemeral in flow, and 10 feet or less in width. Installing silt curtains on such crossings is not practical or effective. For all waterbody crossings with perceptible flow, including the Captina Creek major waterbody crossing, Texas Eastern will use the dam-and-pump dry crossing method, which diverts or isolates flow during pipe installation. We agree that the dam-and-pump crossing method, as further discussed in section A.7.2. of the EA, is sufficient for sediment control downstream, and that additional silt curtains are unnecessary.

43. The EPA requests clarification on whether Texas Eastern plans to add chemicals to hydrostatic test waters during use. Texas Eastern filed a response stating that no chemicals will be added to hydrostatic test waters during use.

44. The EPA requests that the Commission identify Texas Eastern's proposed wetland compensation mitigation plan, including details on any proposed mitigation banking or compensation for the loss of jurisdictional forested wetland. Section B.2.3. of the EA discusses wetlands and states that Texas Eastern applied for the necessary Clean Water Act Section 404 and 401 permits in February and April of 2014, respectively. Environmental Condition 8 of this order requires that Texas Eastern document receipt of these federal authorizations before receiving written authorization from the Commission to commence construction. It is within the various permitting agencies' discretion to determine the appropriate wetland compensation mitigation plans. In addition, Texas

Eastern filed comments stating that, at the request of the Ohio Environmental Protection Agency (Ohio EPA), a wetland compensation mitigation plan will be processed through their in-lieu-fee mitigation program.

45. The EPA requests that Texas Eastern commit to voluntary compensatory mitigation for the loss of upland forest. As discussed in section B.3.1 of the EA, Texas Eastern will minimize the loss of upland forest by following existing pipeline and other utility rights-of-way for about 38 percent of the proposed route and will utilize existing roads for project access where practicable. In addition, Texas Eastern is working with the Ohio Department of Natural Resources (Ohio DNR) on compensation for impacts, including upland forested segments in the Brush Creek Wildlife Area and Jefferson Lake State Park. We conclude that these measures are adequate.

46. The EPA comments that the EA should have included information on Texas Eastern's and associated interconnecting pipeline companies' safety records and accident data regarding the construction, operation, and maintenance of their natural gas pipelines. Section B.9 of the EA discusses pipeline safety and Texas Eastern's commitment to design, construct, operate, and maintain the OPEN Project in accordance with the U.S. Department of Transportation Minimum Federal Safety Standards in Title 49 Code of Federal Regulations Part 192, as it is indeed required to do. The EA also discloses the incidence rate and causes of pipeline accidents nationwide; however, we conclude that company-specific pipeline safety records are not required to make informed NEPA conclusions. The EA also places the occurrence of pipeline accidents in the context of the over 300,000 miles of natural gas transmission pipeline in the United States and, relative to fatalities caused by non-pipeline accidents, concludes that natural gas transmission pipelines continue to be a safe, reliable means of energy transportation.

47. The EPA requests that Texas Eastern commit to additional safety measures, if warranted. The Commission has a *Memorandum of Understanding on Natural Gas Transportation Facilities* with the U.S. Department of Transportation, which has exclusive authority to promulgate federal safety standards used in the transportation of natural gas. Once a natural gas pipeline is constructed, the U.S. Department of Transportation maintains oversight of safety during operations, and will require additional safety measures, if warranted, based on its oversight of the project.

48. Regarding the cumulative impacts discussed in the EA, the EPA states that the Kensington Processing Plant should have been included in table B-28, which lists projects within the region of influence for the OPEN Project that could have cumulative impacts on environmental resources. We clarify that the Kensington Processing Plant is already included in table B-28 under the name of its operator, Utica East Ohio Midstream LLC.

49. The EPA comments that the EA should have included Texas Eastern's Erosion and Sediment Control Plan as an appendix to the EA. The Erosion and Sediment Control

Plan is filed in the docket for this proceeding and the EA provides instructions on how to access this document on our public e-Library website. We find this to be sufficient.

Allegheny Concerns

50. Allegheny contends that the EA is flawed because, by considering only those projects in the same vicinity as the proposed project, the EA fails to adequately analyze and disclose the impacts of past, present, and reasonably foreseeable future natural gas drilling in the Marcellus and Utica shale formations. Allegheny asserts that the proposed project is a “key link in the chain, connecting supply to markets,” and that the Commission must consider the impact of shale gas drilling in the EA. Allegheny also asserts that the Commission should quantify the impacts of existing and potential natural gas wells and refers to several forecasting publications, including a 2011 National Petroleum Council report and a 2012 Nature Conservancy presentation on shale gas extraction in Pennsylvania, to support its contention.

51. Cumulative impacts are defined by CEQ as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions.”²⁰ CEQ notes that a cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur *in the project area being analyzed*.²¹

52. An impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”²² Courts have noted that the starting point of any NEPA analysis is a “rule of reason,” under which NEPA documents “need not address remote and highly speculative consequences.”²³ CEQ adds that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”²⁴

²⁰ 40 C.F.R. § 1508.7 (2014).

²¹ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, (January 1997).

²² *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

²³ *Hammond v. Norton*, 370 F.Supp. 2d 226, 245-46 (D.D.C. 2005).

²⁴ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997).

53. Consistent with CEQ guidance, to determine the scope of the cumulative impact analysis in an EA, staff establishes a “region of influence” to define the area affected by the proposed action in which existing and reasonably foreseeable future projects may also result in environmental impacts. The region of influence is established on a project-by-project basis and is specific to the resource affected and the magnitude of the other projects being considered.²⁵ The proposed project affects a confined corridor within five Ohio counties: Columbiana, Carroll, Jefferson, Belmont, and Monroe. The EA considers the five counties as the “region of influence” in which impacts have the potential to be cumulative. The projects that were identified within the region of influence include 17 energy projects (including gas exploration), six projects to upgrade and/or expand infrastructure, and five commercial projects.

54. The EA identifies potential cumulative impacts associated with current, proposed, or reasonably foreseeable future projects or activities in the region of influence and lists them in table B-28. The EA indicates that many of these energy projects are related to ongoing and pending development of oil and gas resources from Utica Shale and Marcellus shale, including wells, gathering lines, and oil and gas product pipelines. Production and gathering facilities are not regulated by the Commission but are overseen by the region’s state and local agencies with jurisdiction over the management and extraction of shale oil and gas resources. The EA describes development and production of natural gas resources in section B.10. and considers the development of oil and gas resources from the Utica and Marcellus shales, including wells, gathering lines, oil and gas product lines, electric distribution lines, road and bridge upgrades and improvements, commercial development, and water system construction.

55. Allegheny asserts that the EA, instead of quantifying the impacts of the existing and potential wells identified in the analysis, “simply provides a laundry list of existing and potential wells without discussing the incremental effects of those impacts as a whole.”²⁶

56. We disagree. Table B-28 identifies existing and potential wells (and all other projects which could cumulatively impact environmental resources in the region of influence), and notes the potential impact area (e.g., 19,000 acres, 45 miles, 80,000 acres); the closest known distance to the OPEN Project (e.g., 18 miles, 14 miles, 22 miles); and the description of each identified well (e.g., drilling for oil and natural gas

²⁵ The determination of geographic extent is “assigned to the special competency of the appropriate agencies” and will not be overturned unless arbitrary or capricious. *See Citizens for Smart Growth v. USDOT*, 669 F.3d 1203, 1215 (11th Cir. 2012) (citing *Kleppe v. Sierra Club*, 427 U.S. 390 at 414.).

²⁶ Allegheny Rehearing Request at 3.

near Wintersville Airpark; developing wells on its 76,000 acres including on land in Jefferson Co.).²⁷ Where feasible, the EA includes conservative assumptions regarding the scope of certain projects when specific acreages were not available.

57. Further, the EA evaluates the potential cumulative impacts of those projects identified in Table B-28 on individual resources areas, including: waterbodies and wetlands; vegetation and wildlife; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; and climate changes.²⁸ The EA concludes that any potential cumulative impacts that could occur in conjunction with the project would be temporary and minor, and that, overall, the project would not result in significant cumulative impacts.

58. For example, Section 10.1, Water Resources and Wetlands, notes that most of the projects listed in Table B-28 are located within the same major watersheds that would be crossed by the pipeline, which would likely involve direct and indirect waterbody and wetland impacts. The EA notes that this may result in “some cumulative impacts on water resources,” but that such impacts would not be significant, given that effects from the construction and operation of the OPEN pipeline facilities would be relatively minor and would be minimized by various measures recommended in the EA.²⁹ We believe this analysis is consistent with the CEQ regulations.

59. Allegheny also asserts that natural gas production projects are “linked together” with the OPEN Project, and may have additive or synergistic effects despite the fact that they are not in the same vicinity as the OPEN Project.³⁰ Accordingly, Allegheny argues, the EA should have considered the cumulative impacts of natural gas drilling in the “broader Utica and Marcellus Shale plays.”³¹

60. We disagree with Allegheny’s suggestion that our action in approving the OPEN Project necessitates an analysis of the impacts associated with drilling in areas of the Utica and Marcellus Shale plays outside of the project’s region of influence. To the extent Allegheny is asserting that such drilling is an indirect effect of the OPEN Project, we note that the Council on Environmental Quality’s regulations implementing NEPA

²⁷ EA at Table B-28, p. 154-158.

²⁸ EA at pp. 159-164.

²⁹ *Id.* at 159.

³⁰ Allegheny Rehearing Request at 3.

³¹ *Id.* at 5.

state that an agency's NEPA review must analyze a project's indirect impacts, which are caused by the proposed action and occur "later in time or farther removed in distance [than direct impacts], but are still reasonably foreseeable."³² For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be "two links of a single chain."³³ There is an insufficient causal link between the OPEN Project and gas production in the extensive regions of the Utica and Marcellus Shale plays for such development to be considered an indirect impact under NEPA and CEQ's regulations. Natural gas development in those areas will continue, and indeed is continuing, irrespective of our action here. Moreover, specific impacts associated with such development are not reasonably foreseeable as contemplated by CEQ regulations. Allegheny fails to link any specific natural gas production in the Utica and Marcellus Shale plays with the OPEN Project; thus, it is unknown at this time how much, if any, future natural gas production will be associated with the OPEN Project, much less the timing, location, and associated potential impacts of such development activity. Accordingly, the level of impact analysis Allegheny seeks would require the Commission to consider remote and highly speculative impacts that would not meaningfully assist us in our decision making.

61. In our view, Allegheny seeks a programmatic NEPA review for a program that is not before the Commission. The CEQ regulations state that major federal actions for which an environmental impact statement may be required include "...programs, such as a group of concerted actions to implement a specific policy or plan; and systematic and connected agency decisions allocating agency resources to implement a specific statutory program..."³⁴ The OPEN Project does not meet this definition for broad proposals. Further, the Commission considers proposed projects on their own merits, based on the facts and circumstances specific to each proposal.

Landowner Concerns

62. Thomas and Janet Householder raise concerns about the pipeline route across their property and future restrictions on use of their land. They request that the route avoid their property and that additional temporary workspace on their property be eliminated or reduced. The EA discusses the proposed route and route alternatives for this general area in section C.3.2. Texas Eastern developed the pipeline route in this area in consultation with the Ohio DNR to avoid an area of contiguous forest in the Brush Creek Wildlife

³² 40 C.F.R. § 1508.8(b) (2014).

³³ *Sylvester v U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

³⁴ 40 C.F.R. § 1508.18(b)(3) (2014).

Area. In responses to the landowner's comments filed on October 8, 2014, and October 28, 2014, Texas Eastern notes that the route and workspaces are located in a way that facilitates constructability and secures long-term maintenance in the general area, which is challenged by topography that includes steep slopes, unstable soils, and stream crossings on neighboring parcels. The EA concludes, and we concur, that the alternatives for the crossing of the Brush Creek Wildlife Area offer no significant environmental advantage and the proposed route and associated workspace are acceptable. While a permanent easement would prevent the placement of permanent structures within the right-of-way, Texas Eastern will employ measures to minimize impacts on residences as discussed in section B.5.2 of the EA.

63. Charles and Julie Anderson raise concerns about the pipeline route on their property and request avoidance of a cemetery. Section B.7.2 of the EA discusses Texas Eastern's cultural survey results, which identifies four cemeteries along the pipeline route that will be avoided. None of those four cemeteries, however, are located on or near the commenter's property. On October 8 and October 20, 2014, Texas Eastern filed responses to this comment, stating that, based on landowner consultations, visual inspections, and document research, the location of the cemetery is believed to be outside of the construction work area. Texas Eastern states that they will place signs in this area and continue to work with the landowners. We have added Environmental Condition 24 to this order requiring Texas Eastern to continue to consult with Charles and Julie Anderson before construction to ensure that all impacts to any cemeteries on their property are avoided.

64. In conclusion, we have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Texas Eastern's application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

65. 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.³⁵

³⁵See, 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);

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct and operate the OPEN Project facilities, as described and conditioned herein, and as more fully described in the application.

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

- (1) completion of construction 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 Commission regulations 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;
- (3) compliance with the environmental conditions in Appendix C to this order; and
- (4) executing, prior to the commencement of construction, firm contracts for the volumes and service terms equivalent to those in its precedent agreements.

(C) Texas Eastern's proposed incremental rates for the Open Project and Ohio Extension are approved, as more fully discussed above.

(D) Texas Eastern must file actual tariff records setting forth its incremental recourse rates in accordance with section 154.207 of the Commission's regulations and other proposed changes to its tariff implementing the project not less than 30 days, nor more than 60 days, prior to placing the OPEN Project in service.

(E) Texas Eastern shall file an executed copy of each non-conforming agreement as part of its tariff, disclosing and reflecting all non-conforming language

agreements not less than 30 days, and not more than 60 days, prior to the commencement of service on the project.

(F) Texas Eastern 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 Texas Eastern. Texas Eastern shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A
Timely Motions to Intervene

Atmos Energy Corporation
Calpine Energy Services, L.P.
Piedmont Natural Gas
Chesapeake Energy Marketing, Inc.
Chevron U.S.A. Inc.
CNX Gas Company LLC
Consolidated Edison Company of New York, Orange and Rockland Utilities and
Philadelphia Gas Works
Duke Energy Corporation
Duke Energy Progress, Inc. and Duke Energy Carolinas, LLC
Exelon Corporation
ExxonMobil Gas & Power Marketing Company
Ralph W. Jones
Municipal Defense Group³⁶
National Fuel Distribution Corporation
National Grid Gas Delivery Companies
New England Local Distribution Companies
New Jersey Natural Gas Company
NextEra Energy Power Marketing, LLC
NiSource Distribution Companies
NJR Energy Services Company
Noble Energy, Inc.
PSEG Energy Resources & Trade LLC
Rice Drilling B LLC
Shell Energy North America (US) L.P.
UGI Distribution Companies

³⁶ The Municipal Defense Group consists of the following following distributor-customers of Texas Eastern Transmission, LP: Borough of Chambersburg, Pennsylvania; Batesville, Indiana; Cairo Public Utility Company, an Illinois not-for profit corporation; Gloster, Mississippi; Harrisburg, Arkansas; Horton Highway Utility District, Tennessee; Lawrenceburg, Tennessee; Loretto, Tennessee; Middleborough, Massachusetts, Municipal Gas and Electric Department; Norwich, Connecticut, Department of Public Utilities; Smyrna, Tennessee; and Utica, Mississippi.

Appendix B
Comments

Appalachian Partnership for Economic Growth
Jack Cera
Colerain Township Trustees
Eastern Gateway Community College
Lou Gentile
Bill Johnson
Laborers' International Union of North America
Ohio Gas Association
Greg Probst
Joe Schiavoni
Texas Eastern Gas Pipeline Company
Andy M. Thompson

Appendix C
Environmental Conditions

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

1. Texas Eastern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Texas Eastern 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 has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the 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,** Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction,** Texas Eastern 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.

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

5. Texas Eastern 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, warehouse/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 Texas Eastern's *Erosion and Sediment Control 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**, Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Texas Eastern 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 Texas Eastern 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 Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in session(s);
 - f. the company personnel and specific portion of Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Texas Eastern shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Texas Eastern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for 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 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 which 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 Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Texas Eastern 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.
 10. **Within 30 days of placing the authorized facilities in service**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and installed 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 Texas Eastern 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.
 11. **Prior to construction**, Texas Eastern shall file a Winter Construction Plan with the Secretary for review and written approval by the Director of OEP. The plan shall address all items included in section III.I. of the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*.
 12. **Prior to construction**, Texas Eastern shall file with the Secretary an updated list of the location of all water wells within 150 feet of the proposed construction workspaces. **Within 30 days of placing the facilities in service**, Texas Eastern shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

13. **Prior to construction**, Texas Eastern shall consult with the Ohio EPA and file agency correspondence with the Secretary identifying any additional recommendations for crossing impaired waterbodies or confirming that no further mitigation is warranted.
14. **Prior to construction**, Texas Eastern shall file with the Secretary:
 - a. the water withdrawal source, discharge location, and estimated number of gallons that would be appropriated from each waterbody for the purposes of hydrostatic testing of the project pipeline and aboveground facilities; and
 - b. written approval from the permitting agencies for hydrostatic water withdrawal from Captina Creek, Cross Creek, and Yellow Creek.
15. **Prior to construction**, Texas Eastern shall develop specific procedures in coordination with the Ohio EPA to prevent the introduction or spread of invasive species, noxious weeds, and soil pests resulting from construction and restoration activities. These procedures shall be filed with the Secretary for review and written approval by the Director of OEP.
16. **Prior to construction**, Texas Eastern shall file with the Secretary any comments from the FWS on the hellbender in water surveys and relocation protocols for the Yellow, Cross, and Captina Creek crossings.
17. **Prior to construction**, Texas Eastern shall file with the Secretary any comments from the FWS and the Ohio DNR on the freshwater mussel in water survey results.
18. Texas Eastern shall not begin construction of the proposed project **until**:
 - a. all outstanding biological surveys have been completed;
 - b. the Commission staff completes any necessary Section 7 ESA consultation with the FWS; and
 - c. Texas Eastern has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
19. **Prior to construction**, Texas Eastern shall file with the Secretary for the review and written approval of the Director of OEP evidence of landowner concurrence with the site-specific residential construction plan at milepost 60.3.
20. **Prior to construction**, Texas Eastern shall develop a visual screening plan for the Colerain Compressor Station that includes the following mitigation measures:

- a. vegetative screening at the proposed compressor station site and/or on the neighboring parcel; and
 - b. minimization measures such as strategic light placement and/or use of non-glare fixtures to reduce visibility and potential glare due to nighttime lighting.
21. Texas Eastern shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Texas Eastern files with the Secretary any outstanding cultural resources survey(s) and evaluation reports, any necessary treatment plans and the Ohio Historic Preservation Officer's comments on the reports and plans;
 - 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 Director of the OEP approves all cultural resources reports and plans, and notifies Texas Eastern in writing that treatment plans/mitigation measures 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."**

22. Texas Eastern shall file a noise survey for the Colerain Compressor Station **no later than 60 days** after placing the station into service. If a full load condition noise survey is not possible, Texas Eastern shall provide an interim survey at maximum possible horsepower load and provide the full load survey **within six months**. If the noise attributable to the operation of the station under interim or full horsepower load conditions exceeds a day-night averaged sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive areas (NSAs), Texas Eastern shall install additional noise controls to meet that level **within one year** of the in-service date. Texas Eastern shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.
23. Texas Eastern shall file noise surveys for the Kensington, Brush Creek, and Salem M&R stations, and the Texas Eastern Delivery Regulator Station **no later than 60 days** after placing the stations into service. If the noise attributable to the operation of a station under the maximum flow conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Texas Eastern shall install additional noise controls

to meet that level **within one year** of the in-service date. Texas Eastern shall confirm compliance with this by filing second noise surveys for each location **no later than 60 days** after it installs the additional noise controls.

24. **Prior to construction**, Texas Eastern shall consult with Charles and Julie Anderson to identify the location of any cemetery on their property and confirm in a filing with Secretary that all impacts on the cemetery will be avoided.