

133 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

East Tennessee Natural Gas, LLC

Docket No. CP10-89-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued October 25, 2010)

1. On March 8, 2010, East Tennessee Natural Gas, LLC (East Tennessee) filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ requesting authorization for its Northeastern Tennessee Project (NET Project), which will provide up to 150,000 dekatherms per day (Dth/d) of firm transportation service to the Tennessee Valley Authority's (TVA) John Sevier Combined Cycle Plant (Sevier Plant) on the Holston River in Hawkins County, Tennessee. The NET Project will require the abandonment, replacement, and construction of pipeline facilities in Virginia and Tennessee. As discussed below, the Commission will grant the requested authorizations, with appropriate conditions.

I. Background and Proposal

2. East Tennessee is a Tennessee limited liability company and an indirect wholly owned subsidiary of Spectra Energy Partners, L.P. East Tennessee is a natural gas company as defined by the NGA² and is engaged in the business of transporting natural gas in interstate commerce subject to the Commission's jurisdiction. East Tennessee owns and operates an interstate natural gas pipeline system extending from central Tennessee through Virginia to North Carolina and south to Georgia.

3. The TVA will construct the new Sevier Plant, a natural gas-fired power generation facility on the Holston River in Hawkins County, Tennessee. The TVA is constructing the Sevier Plant to meet requirements for reduced air emissions. The power plant will

¹ 15 U.S.C. §§ 717f(b), (c) (2006).

² 15 U.S.C. § 717a(d)(6) (2006).

provide approximately 575 megawatts (MW) of simple-cycle capacity available by December 31, 2011, and a total capacity, including combined-cycle capacity, of approximately 880 MW by June 1, 2012. The TVA requires that test gas be received from East Tennessee by September 1, 2011.

4. East Tennessee held an open season from June 18 to July 1, 2009, to gauge market interest for additional mainline capacity from the Appalachian supply region and other regions into Tennessee. As a result of the open season, the TVA executed a precedent agreement with East Tennessee for 150,000 Dth/d of firm transportation service for a term of 25 years at negotiated rates. Additionally, East Tennessee held a reverse open season from July 21 to August 4, 2009, to consider offers by its current firm shippers to turn back all or a portion of their current firm transportation entitlements to reduce the scope of East Tennessee's facilities requirements for the NET Project. The reverse open season did not result in any turn back of capacity.

5. East Tennessee proposes to: (1) construct approximately 8.4 miles of new 24-inch-diameter pipeline (Sevier Mainline Extension) from East Tennessee's Flatwoods Compressor Station 3306 in Greene County, Tennessee, to a proposed delivery point at the Sevier Plant in Hawkins County;³ (2) install a new meter facility, to be located on the Sevier Plant site, at the terminus of the Sevier Mainline Extension; (3) construct approximately 8.0 miles of 24-inch-diameter pipeline looping (Flatwoods Loop) along East Tennessee's existing 16-inch diameter Line #3300-1 in Sullivan, Washington, and Green Counties, Tennessee;⁴ (4) modify existing piping at the Flatwoods Compressor Station 3306; (5) install a new regulator at the beginning of the Flatwoods Loop in Greene County, Tennessee; (6) abandon by removal and replace an existing 12-inch-diameter pipeline with a new 24-inch-diameter pipeline, beginning at the existing Fordtown Compressor Station and extending for approximately 2.3 miles in Sullivan County, Tennessee (Fordtown Relay);⁵ (7) abandon by removal and replace an existing 8-inch-diameter pipeline with a new 24-inch-diameter pipeline beginning at the existing Bristol Compressor Station and extending for approximately 9.2 miles in Washington County, Virginia, and Sullivan County, Tennessee (Bristol Relay);⁶ and (8) modify

³ This extension will be routed predominately along an existing TVA electric transmission line corridor.

⁴ Approximately 5.6 miles of the loop will be constructed within East Tennessee's existing easements.

⁵ The abandoned facilities, with the exception of the bored road crossing which will be abandoned in place, will be removed.

⁶ As with the Fordtown Relay, the abandoned facilities, with the exception of the bored road crossing which will be abandoned in place, will be removed.

existing piping at the Glade Spring Compressor Station 3311 in Washington County, Virginia.

6. East Tennessee estimates the cost of the NET Project will be approximately \$135 million. East Tennessee seeks authorization to establish an incremental recourse rate under its existing Rate Schedule FT-A and an incremental fuel percentage for service on the NET Project. Specifically, East Tennessee proposes a daily demand rate for firm transportation services using the capacity created by the NET Project of \$0.4933 per Dth, a maximum reservation rate of \$15.005 per Dth, and an incremental fuel factor of 1.54 percent.

II. Notice and Interventions

7. Notice of East Tennessee's application was published in the *Federal Register* on March 29, 2010.⁷ Atmos Energy Corporation, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., the East Tennessee Group (Customer Group),⁸ Piedmont Natural Gas Company, Inc., and the TVA filed timely motions to intervene.⁹

8. Sallyanne Mumpower-Heltzel, a landowner, commented about past construction practices along the right-of-way on her property. Another landowner, R&J Development Company, voiced concerns about the pipeline interfering with future development plans and requested the existing easement and pipeline on its property be relocated. These landowners' concerns are addressed below.

⁷ 75 Fed. Reg. 15,426 (2010).

⁸ The members of the Customer Group include: Appalachian Natural Gas Distribution Company; Athens Utilities Board; Citizens Gas Utility District; Cookeville Gas Department; Elk River Public Utility District; Etowah Utilities Gas Department; Fayetteville Public Utilities; Gainesboro Gas System; Gallatin Natural Gas System; Harriman Utility Board; Hawkins County Gas Utility District; Jamestown Gas System; Jefferson-Cocke County Utility District; Knoxville Utilities Board; Lenoir City Utilities Board; Lewisburg Gas Department; Livingston Gas Department; Loudon Utility Gas Department; Madisonville Gas System; Marion Natural Gas System; Middle Tennessee Natural Gas Utility District; Mt. Pleasant Gas System; Oak Ridge Utility District; Powell Clinch Utility District; Rockwood Water & Gas; Sevier County Utility District; Sweetwater Utilities Board; and Unicoi County Gas Utility District.

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2010).

9. In its intervention, the Customer Group stated that based upon statements included in East Tennessee's application, it is concerned that East Tennessee intends to roll the costs of the NET Project into its system-wide rates. On April 27, 2010, East Tennessee filed an answer to the Customer Group's comments. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹⁰ we may for good cause waive this provision. In this instance, we find good cause to accept the answer because it provides information that assists us in our decision making. The issues identified by the Customer Group in its comments and East Tennessee in its answer are also discussed below.

III. Discussion

10. Because East Tennessee proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment, construction, and operation of the facilities are subject to the requirements of section 7 of the NGA.¹¹

A. Application of the Policy Statement on New Facilities

11. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction, and establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.¹² 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 by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of unnecessary disruptions to the environment and exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to support the project financially without relying on subsidization from existing customers. The next step is to determine whether the

¹⁰ 18 C.F.R. § 385.213(a)(2) (2010).

¹¹ 15 U.S.C. § 717f (2006).

¹² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders clarifying policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

applicant has made efforts to eliminate or minimize any adverse impacts 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 pipeline. 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 impacts on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

13. East Tennessee's NET Project meets the threshold requirement that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. East Tennessee proposes an incremental recourse rate and an incremental fuel rate for services using the capacity of the proposed facilities, which will protect existing East Tennessee shippers from subsidizing the expansion.

14. The Customer Group agrees that, because the NET Project is designed for the sole purpose of serving the TVA, an incremental recourse rate and fuel percentage are appropriate. However, the Customer Group contends East Tennessee's statements that the expansion will result in system-wide benefits, such as improved reliability and flexibility, could be construed as attempting to make a case for rolling the NET Project costs into its system rates in the future. The Customer Group claims that none of these benefits have been demonstrated or proven. The Customer Group points out that East Tennessee is not planning to actually charge any shipper the incremental recourse rate, since TVA will pay a negotiated rate. The Customer Group avers that, to the extent that the negotiated rate is likely to be less than the recourse rate and may not recover all the costs of the NET Project, any shortfall in East Tennessee's future recovery of those costs must be borne by East Tennessee alone, and not by existing customers.

15. In response, East Tennessee reaffirms that it has not requested a predetermination in this proceeding that future rolled-in rate treatment for the costs associated with the NET Project would be appropriate, nor has it requested that the Commission make any other type of determination regarding the possibility of rolled-in rate treatment of the costs of the NET Project in a future rate case. Nevertheless, East Tennessee requests that in this proceeding the Commission not prejudge the merits of any such request or foreclose the possibility of such a request in a future proceeding.

16. While East Tennessee's proposed project will include replacement of certain existing mainline pipe, East Tennessee acknowledges that the planned service for the TVA is the impetus for this proposed project at this time and has not alleged or demonstrated that any system benefits which might result from the project would be

sufficient to justify rolled-in rate treatment for the project's costs.¹³ We find that East Tennessee's proposal meets the Certificate Policy Statement's threshold requirement of ensuring that its existing customers will not subsidize the expansion because East Tennessee has proposed an incremental recourse rate. We are approving the proposed rate. While East Tennessee is not foreclosed from proposing a change in rate treatment in some future rate proceeding, should it do so, it will bear the burden of proving that such treatment will still not result in subsidization. Further, whether TVA's negotiated rate covers the cost of the NET Project is not pertinent here because East Tennessee will be at risk for any revenue shortfall if negotiated rates do not fully recover the estimated cost of the NET Project.¹⁴

17. We find that the NET Project is designed to provide the service to the TVA without degrading the service of existing customers. Also, because the project is designed to meet a new incremental load, no other pipelines will be impacted by East Tennessee's proposal. East Tennessee has minimized impacts on landowners and communities by utilizing its existing easements and other existing right-of-ways for many of the project facilities. East Tennessee further limits impacts by maximizing reliance on replacement of existing pipe. In addition, with the exception of approximately 2.4 miles, the loop will be constructed within East Tennessee's existing easements, thus eliminating the need to acquire additional permanent right-of-way.

18. The capacity to be created by the NET Project is fully subscribed by the TVA and will provide transportation for fuel for TVA's new Sevier Plant, which will help TVA meet its requirements to reduce emissions. Based on the benefits the NET Project will provide and the lack of any identifiable adverse impacts on East Tennessee's existing customers, other pipelines and their customers, and minimal impacts on landowners and communities, the Commission finds, consistent with the Certificate Policy Statement and, subject to the Commission's environmental review, that East Tennessee's proposal is required by the public convenience and necessity.

¹³ See Certificate Policy Statement, 88 FERC, at 61,746 & n.12 (discussing relevance of system benefits in whether there should be a presumption of future rolled-in rate treatment for projects costs that would increase existing customers' rates).

¹⁴ See, e.g., *Natural Gas Pipeline of America*, 110 FERC ¶ 61,341, at P 23-25 (2005); *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 (2002).

19. Consistent with Commission policy we will require East Tennessee to execute contracts for the capacity and term under the precedent agreement prior to commencing construction of the NET Project.¹⁵

B. Abandonment

20. East Tennessee requests authorization to abandon by removal a total of 11.5 miles of pipeline.¹⁶ These sections will be replaced with larger diameter pipeline in order to accommodate the additional capacity for TVA. Accordingly, the Commission finds that approval of the requested abandonment is in the public interest, subject to the environmental conditions discussed herein.

C. Rates

21. East Tennessee has proposed an incremental recourse rate of \$15.005 per Dth, which is higher than East Tennessee's existing Part 284 FT-A maximum rate of \$6.73 per Dth. We have reviewed the rate design and cost factors underlying the proposed incremental recourse rates and find that the rates are appropriate. Further, we find that East Tennessee's proposed incremental fuel rate of 1.54 percent is appropriate.

22. East Tennessee states that it will maintain a separate record of capital costs for the NET Project in its books and accounts. The Commission's policy when approving incremental rates is to require the assignment of costs to the customers receiving the service to ensure that the project is not subsidized by existing customers. The Commission requires pipelines to isolate the incremental costs associated with incremental facilities, keeping separate books and records so that parties during a rate case can examine such records to ensure that they are not subsidizing a facility from which they are receiving service.¹⁷ By requiring East Tennessee to isolate the costs of the new incremental service using the NET Project's facilities and by requiring East Tennessee to keep separate books and accounting of the costs attributable to the proposed incremental service, the Commission can protect existing customers. Therefore, the

¹⁵ See, e.g., *Texas Eastern Transmission*, 119 FERC ¶ 61,258, at Ordering Paragraph (E) (2007).

¹⁶ Road crossings will be abandoned in place.

¹⁷ *Dominion Cove Point LNG, LP*, 120 FERC ¶ 61,213, at P 18 (2007); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235, at P 23 (2007); *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 115 (2006); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303, at P 36 (2003); and *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275, at P 37 (2002).

Commission will require that the books be maintained with applicable cross-references as required by section 154.309 of the Commission's regulations.¹⁸ 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 proceedings.

23. East Tennessee states that TVA has agreed to pay a negotiated rate. In accordance with the Negotiated Rate Policy Statement,¹⁹ East Tennessee states that it will file the negotiated rate agreement 30 to 60 days prior to the date on which the underlying negotiated rates are proposed to become effective. Also, East Tennessee states that it will maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with the negotiated rates in sufficient detail so that they can be identified in Statements G, I and J in any future NGA section 4 rate case. The Commission is not approving the negotiated rate here; rather we are approving the recourse rate for the service.²⁰ When East Tennessee files the negotiated rate under section 4, protests may be filed should evidence indicate such rate to be discriminatory.

D. Allowance for Funds Used During Construction

24. East Tennessee proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$5,023,020 as part of the NET Project. East Tennessee states that this amount only includes AFUDC accrued after filing its certificate application on March 8, 2010.

25. The Commission revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*,²¹ to allow natural

¹⁸ 18 C.F.R. § 154.309 (2010).

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, *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *pet. for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. LEXIS 20697 (D.C. Cir., July 20, 1998).

²⁰ The Commission has declined to examine negotiated rates in the context of its review of the merits of a certificate application. *See Independence Pipeline Co.*, 91 FERC ¶ 61,102, at 61,341, *order issuing certificates*, 92 FERC ¶ 61,022, at 61,047, *order on reh'g*, 92 FERC ¶ 61,268 (2000).

²¹ *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010); and *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010).

gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. Based on East Tennessee's representations, its accrual of AFUDC for the NET Project appear to be consistent with the revised policy conditions.

E. Environment

26. Commission staff began the environmental review of East Tennessee's NET Project following the grant of approval for East Tennessee to use the pre-filing process on August 10, 2009, in Docket No. PF09-13-000. As part of the pre-filing review, a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Northeastern Tennessee Project and Request for Comments on Environmental Issues* (NOI) was issued on October 22, 2009. The NOI was mailed to 176 interested parties including federal, state, and local officials; agency representatives; conservation organizations; Native American groups; local libraries and newspapers; and affected property owners.

27. We received scoping comments in response to the NOI from an affected property owner, Mr. Keith Horne; the Commonwealth of Virginia Departments of Environmental Quality (Virginia DEQ) and Conservation and Recreation (Virginia DCR); the U.S. Army Corps of Engineers - Nashville District (Army Corps); and the U.S. Fish and Wildlife Service (FWS). The primary issues raised concerned the proposed width of the Fordtown Relay construction right-of-way; the impact of tree clearing on potential wildlife habitat; construction impacts on wetlands, water resources, natural heritage resources and fisheries; and federally-listed threatened and endangered species.

28. Additional environmental comments were received in response to the Notice of Application that was issued on March 22, 2010. Two affected property owners, Sally Mumpower-Heltzel and Jill Webb, representing the R&J Development Company, submitted comments concerning the impact of the project on land value and land use; the easement acquisition process; and construction practices.

29. To satisfy the requirements of the National Environmental Policy Act,²² an environmental assessment (EA) was prepared for East Tennessee's proposal in cooperation with the Army Corps. The EA was issued on July 23, 2010, with a 30-day comment period. The EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, aesthetics, cultural resources, air quality, noise, reliability and safety, cumulative impacts, and alternatives. All substantive comments regarding environmental issues were addressed in the EA, and we adopt the EA's conclusions, as addressed below.

²² 42 U.S.C. §§ 4321-4347 (2006).

30. Mr. Horne expressed concern about the size of the proposed construction right-of-way across his property and the impact of tree clearing on wildlife habitat. As described in section 1.0 of the EA, the existing 50-foot-wide East Tennessee permanent easement would not be expanded. However, an additional 50 feet of temporary right-of-way would be required to install the Fordtown Relay pipeline. The need for additional right-of-way to provide temporary construction work space was considered and, based on the scope of the Fordtown Relay facilities and the resources impacted, we believe the amount of temporary work space proposed is appropriate. In addition, section 2.3 of the EA describes the potential impacts on forest vegetation and wildlife habitat resulting from construction and operation of the NET Project. Although trees within temporary work spaces would be cleared resulting in long-term impacts on this vegetation type, trees would also be allowed to revegetate on lands temporarily impacted by construction activities. Based on the potential impacts of the NET Project on forest vegetation and wildlife habitat, as described in the EA and East Tennessee's proposed impact minimization and mitigation measures, the EA concludes that these resources will not be significantly impacted.

31. The Virginia DEQ provided an outline of the programs it administers and those of other Virginia agencies as they relate to resources potentially impacted by the project. The Virginia DCR expressed concern about construction occurring near a known cave in the project area, impacts on karst terrain, and impacts on two fish species, the Cherokee clubtail and Tennessee dace. Section 2.1 of the EA identifies the location of the cave as approximately one mile northwest of the proposed Bristol Relay and concludes that the project will have no impact on this resource. The EA also identifies karst features that will be crossed by the NET Project and describes how East Tennessee will avoid and mitigate impacts associated with these features. Section 2.3 of the EA concludes that construction and operation of the project would not significantly impact the Cherokee clubtail, the Tennessee dace, or any other fisheries or aquatic resources.

32. Following issuance of the EA, the Virginia DEQ stated that it has no objection to the proposed action provided that all applicable state and federal laws and regulations are followed. The Virginia DEQ also restated its general request that the EA address several resources areas and that the applicant should obtain applicable permits and authorizations, utilize best management construction practices, and adopt time-of-year avoidance windows for crossing waterbodies and other habitats associated with sensitive species. Sections 1.0 and 2.0 of the EA list the required permits and discuss the best management practices contained in East Tennessee's Erosion and Sediment Control Plan. The EA concludes that this plan provides adequate measures and its use will minimize project impacts. This plan also adequately addresses and identifies sensitive time windows for avoidance of resources.

33. In addition, the Virginia DEQ's comments on the EA identified resources of concern it had not previously raised, including water supply and sewage regulations, and

the smooth coneflower, a Virginia threatened and endangered species. Although Virginia's sewage regulations and impacts on sanitary sewage collection systems were not specifically described in the EA, impacts on residences and developed lands in the project area are discussed in section 2.5. The EA concluded that these resources will not be significantly impacted by construction and operation of the proposed project. The Virginia DCR and the Virginia Department of Agriculture and Consumer Services (Virginia DACS), which share responsibility for endangered species management, recommend that a survey be conducted for the smooth coneflower, and that East Tennessee consult with the Virginia DACS concerning this species. Because this species was not identified as a concern in time for inclusion in the EA, Environmental Condition No. 14 in the appendix to this order adds a requirements that East Tennessee consult with the Virginia DACS regarding surveys and mitigation for this species.

34. The Army Corps provided an overview of its permitting responsibilities, requirements, and guidelines as they relate to waters of the United States and wetlands. Section 2.2 of the EA discusses waterbodies and wetlands and, based on the characteristics of the wetlands and waterbodies crossed and East Tennessee's proposed minimization and mitigation measures, concludes that the NET Project will not significantly impact these resources.

35. The FWS submitted scoping comments concerning the federally-listed Indiana and Gray bats and Virginia spiraea. Section 2.3 of the EA describes the potential impacts on these species, and concludes that construction and operation of the proposed project is not likely to adversely affect gray bats and Virginia spiraea, but may affect Indiana bats. Because Indiana bats may be affected, the EA included a recommendation (Environmental Recommendation 12) that construction activities not begin until Commission staff completes formal consultation with the FWS as required by section 7 of the Endangered Species Act.²³ However, after issuance of the EA, the FWS filed comments indicating that East Tennessee had submitted a survey for the Indiana bat and that, based on the survey findings, FWS concurs with the finding in the EA that the NET Project is not likely to adversely affect the Indiana bat. Therefore, formal consultation is not necessary and Environmental Recommendation 12 from the EA has not been made a condition of this order.

36. In its post-EA comments the FWS also commented that the EA contained a thorough description of the project, fish and wildlife resources that occur in the project area, and measures to avoid or minimize impacts on those resources, including wetlands, migratory birds, bald and golden eagles, and other fish and wildlife resources. FWS concurred with the EA's determinations of effect regarding all federally-listed threatened

²³ 16 U.S.C. § 1536 (2006).

and endangered species, and stated that it believes adverse impacts to the aforementioned resources will be avoided or minimized.

37. Regarding Ms. Mumpower-Heltzel's and Ms. Webb's comments, sections 1.0 and 2.5 of the EA discussed land value and land use, the easement acquisition process, and construction procedures. The EA concluded that, based on East Tennessee's proposal and implementation of minimization and mitigation measures, land uses will not be significantly impacted by construction and operation of the NET Project. Additionally, since the proposed Bristol Relay, which will cross R&J Development Company's property, is a replacement project, the relocation of this easement to another portion of the property, as suggested by R&J Development Company, would result in an increase in environmental impacts.

38. East Tennessee's comments on the EA indicate that revised Unanticipated Discovery Plans for cultural resources were included in the April 2010 and May 2010 archaeological survey reports for Tennessee and Virginia, filed May 28, 2010. The Tennessee State Historic Preservation Office (SHPO) accepted the final report for the state in a letter dated July 14, 2010. East Tennessee also stated that the Tennessee survey report included route modifications that would avoid archaeological sites 40WG123, 40WG133, and 40WG135. Those route modifications were incorporated into the alignment sheets filed March 8, 2010, and we find the avoidance plans acceptable. In a letter dated January 27, 2010, the Tennessee SHPO also agreed with East Tennessee's avoidance plans. Therefore, the NET Project should have no effect on historic properties identified in areas inventoried to date in Tennessee. However, East Tennessee has not yet filed the comments of the Virginia SHPO or the Eastern Band of Cherokee Indians on the revised Unanticipated Discovery Plan for facilities proposed in Virginia. Therefore, Environmental Condition No. 12 requires East Tennessee to submit these comments before commencement of construction will be authorized.

39. Based on the analysis in the EA, we conclude that if the NET Project is constructed and operated in accordance with East Tennessee'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.

40. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

local laws, may prohibit or unreasonably delay the construction, replacement, or operation of facilities approved by this Commission.²⁴

41. 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, as supplemented, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to East Tennessee Natural Gas, LLC, to construct and operate the NET Project, as described more fully in the application and in the body of this order.

(B) The authorization in the above paragraph is conditioned on East Tennessee's:

(1) complying with the environmental conditions set forth in the appendix of this order and all 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

(2) constructing and making available for service the facilities described herein, within one year of the date of this order.

(3) executing a firm contract or contracts equal to the level of service represented in its precedent agreement with TVA prior to the commencement of construction.

(C) East Tennessee's request to abandon certain facilities by removal and others in place as more fully described in the body of this order and the application is granted.

(D) East Tennessee shall notify the Commission within 10 days of the effective dates of the abandonments approved in Ordering Paragraph (C).

²⁴ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

(F) East Tennessee shall file actual revised tariff records incorporating the incremental recourse rate to be assessed for service on the NET Project facilities, at least 30 days and not more than 60 days prior to the in-service date of the NET Project, as discussed in the body of this order.

(G) East Tennessee 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 East Tennessee. East Tennessee shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. East Tennessee 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 this Order. East Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, East Tennessee 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 shall be as shown in the EA as supplemented by filed alignment sheets. **As soon as they are available, and prior to the start of construction**, East Tennessee 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 this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets. East Tennessee's exercise of eminent domain authority granted under NGA

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

5. East Tennessee 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 East Tennessee's Erosion and Sedimentation 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:

- (i) implementation of cultural resources mitigation measures;
 - (ii) implementation of endangered, threatened, or special concern species mitigation measures;
 - (iii) recommendations by state regulatory authorities; and
 - (iv) agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of a certificate and before construction begins**, East Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. East Tennessee must file with the Secretary and revisions to the plan as schedules change. The plan shall identify:
 - a. how East Tennessee 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 this Commission Order;
 - b. how East Tennessee will incorporate these requirements into the contract

- bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and 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 locations and dates of the environmental compliance training and instructions East Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the proposed Project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of East Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) East Tennessee 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. Beginning with the filing of its Implementation Plan, East Tennessee 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 East Tennessee's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each segment or spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the 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 corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and

- c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies East Tennessee in writing that avoidance or treatment plans (including archaeological data recovery) may be implemented 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.”**

13. **Prior to the start of construction**, East Tennessee shall file with the Secretary a noise analysis including all supporting detailed calculations for all noise-sensitive areas (NSAs) within one-half mile of the entry and exit sites of the State Highway 11 horizontal directional drill (HDD) for review and written approval by the Director of OEP. The analysis shall include:
 - a. the distance and direction to the nearest NSAs in each cardinal direction from the exit and entry sites;
 - b. background day-night equivalent noise levels (Ldn) at the nearest NSAs;
 - c. estimated entry and exit drilling noise (Ldn) contributions at each of the identified NSAs;
 - d. a noise mitigation plan outlining measures East Tennessee will commit to implement at the HDD site where estimated drilling noise contributions would exceed 55 dBA Ldn at a nearby NSA, the resulting noise levels (in Ldn) with the mitigation measures, and procedures for implementing the mitigation measures if nighttime drilling is deemed necessary; and
 - e. site-specific plans identifying any noise walls or barriers, equipment locations, equipment barriers, or any other noise mitigation measures.
14. East Tennessee shall file with the Secretary documentation of consultations with the Virginia Department of Agriculture and Consumer Services regarding the need to survey for the Virginia state-listed smooth coneflower. This filing shall include a description of any measures that East Tennessee will implement to avoid, minimize or mitigate potential impacts on this species.