

136 FERC ¶ 61,125
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.

Tennessee Gas Pipeline Company

Docket No. CP11-36-000

ORDER ISSUING CERTIFICATE

(Issued August 24, 2011)

1. On November 17, 2010, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting a certificate of public convenience and necessity to construct and operate a new 2,000 horsepower (hp) compressor station along its Northampton Lateral on its 200 Line system in Western Massachusetts in order to provide incremental firm transportation service for Bay State Gas Company (Bay State) and The Berkshire Gas Company (Berkshire) (the Northampton Expansion Project).

2. As discussed below, the Commission will authorize Tennessee's proposed Northampton Expansion Project, subject to certain conditions.

I. Background and Proposal

3. Tennessee is a corporation organized and existing under the laws of Delaware. Tennessee is a natural gas company engaged in the business of transporting and storing natural gas in interstate commerce, under authorizations granted by, and subject to, the jurisdiction of the Commission.

4. Tennessee states that it held an open season for the Northampton Expansion Project from October 12, 2009 to October 30, 2009. In conjunction with the open season, Tennessee also solicited interest in the turn back of capacity that could be used to provide

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157 (2011).

transportation service to shippers as a part of the proposed project. Tennessee states that it received two bids, from Bay State and Berkshire (collectively, the Shippers), for a total of 15,000 dekatherms (Dth) per day of firm transportation service. Tennessee states that it also received a request from one shipper offering to turn back 2,095 Dth per day of capacity on the Northampton Lateral which Tennessee accepted, reserved, and incorporated into the Northampton Expansion Project. Tennessee states that it ultimately entered into binding precedent agreements with Bay State and Berkshire for 10,400 Dth per day firm transportation service (6,100 Dth per day for Bay State and 4,300 Dth per day for Berkshire) for a primary term of 20 years. Tennessee states that it will provide firm transportation service for Berkshire from an interconnection with Iroquois Gas Transmission System, L.P. (Iroquois) near Wright, New York to the Greenfield Massachusetts Meter Station near Northampton, Massachusetts and will provide firm transportation service for Bay State from an interconnection with Maritimes and Northeast Pipeline, L.L.C. (Maritimes) located near Dracut, Massachusetts to the Granite Northampton Massachusetts Meter Station near Northampton, Massachusetts.

5. Tennessee states that by reserving the turn-back capacity for the Northeast Expansion Project, it was able to reduce the facilities that it would need to construct, while meeting the market needs of the Shippers.

6. In order to provide the incremental transportation service, Tennessee proposes to construct and operate a new 2,000 hp compressor station and appurtenant facilities, Compressor Station 260A, on its Northampton Lateral Line 260A-100 in Southwick, Massachusetts. Specifically, Tennessee proposes to install a single electric-driven compressor unit at the new station to provide an additional 8,305 Dth per day of firm transportation service. When combined with 2,095 Dth per day of turn-back capacity reserved for the Northampton Expansion Project, Tennessee will be able to provide the 10,400 Dth per day of firm service requested by the Shippers. Tennessee estimates the total cost of the Northampton Expansion Project to be approximately \$16.7 million.

7. Tennessee proposes an incremental recourse rate for service on the Northampton Expansion Project consisting of a monthly reservation rate of \$29.063 per Dth, a daily commodity rate of \$0.00 per Dth, applicable demand and commodity surcharges, and applicable fuel and lost and unaccounted for charges. Tennessee states that during the open season it provided potential shippers the option to select a cost-of-service recourse rate or a negotiated rate for firm transportation service on the facilities. Tennessee states that both Bay State and Berkshire selected the negotiated rate option. Tennessee states that the negotiated rate with Bay State is comprised of a monthly reservation rate of \$27.38 per Dth and a daily commodity rate of \$0.00 per Dth and that the negotiated rate with Berkshire is comprised of a monthly reservation rate of \$29.20 per Dth and a daily commodity rate of \$0.00.

8. Finally, Tennessee requests the Commission to review and approve provisions in its precedent agreements that do not conform to its pro forma Rate Schedule FT-A transportation service agreement contained in its tariff.

II. Notice and Interventions

9. Notice of Tennessee's application was published in the *Federal Register* on November 30, 2010 (75 Fed. Reg. 74,027). National Fuel Gas Distribution Corporation, Louisville Gas & Electric Company, Piedmont Natural Gas Company, Inc., ProLiance Energy, LLC, the National Grid Gas Delivery Companies, Bay State, PSEG Energy Resources & Trade LLC, Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. all filed timely, unopposed motions to intervene.³

III. Discussion

10. Since Tennessee's proposed facilities will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁴

A. Application of the Certificate Policy Statement

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.⁵ 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, the avoidance of unnecessary disruptions to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

³ 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 (2011).

⁴ 15 U.S.C. § 717f(c), (e) (2006).

⁵ *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).

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 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. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Tennessee is proposing incremental rates to recover the costs associated with the Northampton Expansion Project. Since, as discussed below, we find such rates to be appropriate, Tennessee will not be relying on subsidies from existing customers, and its proposal satisfies the no-subsidization requirement of the Certificate Policy Statement.

14. We also find that Tennessee has designed the project to provide service to the Shippers without degrading the service of its existing customers, none of which have objected to the proposal. In addition, we do not anticipate any adverse impacts on existing pipelines or their captive customers, since the proposed project will bring additional gas supplies to market and will not replace existing service. Finally, by constructing the compressor station on a tract of land that it owns in fee, Tennessee has minimized impacts on landowners and communities.

15. The capacity that the Northampton Expansion Project will create is fully subscribed by the Shippers and will provide increased service to Bay State and Berkshire. Based on the benefits the Northampton Expansion Project will provide and the lack of any identifiable adverse impacts on 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, that Tennessee's proposal is required by the public convenience and necessity.

B. Rates

16. Tennessee states that it will provide the firm transportation service to Bay State and Berkshire pursuant to long-term firm transportation service agreements under Rate Schedule FT-A of Tennessee's tariff and Tennessee's blanket certificate under Part 284, Subpart G of the Commission's regulations. As discussed below, the Commission finds that Tennessee's proposed incremental recourse rates are appropriate.

17. Under the Commission's Alternative Rate Policy Statement, if a pipeline enters into a negotiated rate agreement, the pipeline must provide recourse rates as an alternative.⁶ Tennessee states that it offered cost-of-service recourse rates, as an alternative to negotiated rates, to all potential shippers in the open season held for the project and that Bay State and Berkshire, in their bids in the open season, elected to pay negotiated rates.

18. Tennessee states that it has calculated an incremental recourse rate under Rate Schedule FT-A for firm transportation service on the project facilities.⁷ Tennessee estimates that the total cost of the Northampton Expansion Project will be \$16,687,909. The proposed initial recourse rates for the project are based on a first year cost of service of \$3,627,000⁸ and the project's design capacity of 10,400 Dth per day. The revenue for each of the first three years under the proposed recourse rates is \$3,511,000. The cost of service reflects the income tax rates, capital structure and rate of return approved in Tennessee's settlement in Docket No. RP95-112-000, *et. al.*⁹ The cost of service also reflects a five percent depreciation rate, based on an estimated useful life of 20 years, to match the 20 year life of the service agreements with Bay State and Berkshire. The incremental recourse rate consists of: (i) a monthly reservation rate of \$29.063 per Dth (equivalent to a daily reservation rate of \$0.955 per Dth); (ii) a daily commodity rate of \$0.00 per Dth; (iii) applicable demand and commodity surcharges; and (iv) applicable fuel and lost and unaccounted for charges. The calculated incremental rate is greater than the currently-applicable system rate. Accordingly, we will approve Tennessee's proposed incremental rate as the initial recourse rate for service on the Northampton Expansion Project.

19. Tennessee states that the negotiated rate with Bay State is comprised of a monthly reservation rate of \$27.38 per Dth (equivalent to a daily reservation rate of \$0.90 per Dth)

⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *order granting clarification*, 74 FERC ¶ 61,194 (1996) (Alternative Rate Policy Statement).

⁷ Tennessee included in Exhibit P a *pro forma* tariff sheet, Sheet No. 19, to establish the incremental recourse rates—reservation, commodity, and fuel and loss and unaccounted for charges—under Rate Schedule FT-A for service on the project facilities.

⁸ The second year cost of service is \$3,484,000 and the third year cost of service is \$3,325,000.

⁹ *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,117 (2001); 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997).

and a daily commodity rate of \$0.00 per Dth. Tennessee states that the negotiated rate with Berkshire is comprised of a monthly reservation rate of \$29.20 per Dth (equivalent to a daily reservation rate of \$0.96 per Dth) and a daily commodity rate of \$0.00 per Dth. Tennessee states that these reservation and commodity rates are fixed for the 20-year primary term of the service agreements and are exclusive of applicable surcharges. In addition, Tennessee states that Bay State and Berkshire have agreed to pay any applicable fuel and lost and unaccounted for charges.

20. Tennessee states that although the Northampton Expansion Project is fully subscribed, it is possible that interruptible transportation service may be available when Bay State and Berkshire are not utilizing all of the proposed project's firm capacity. Tennessee states that since the Northampton Expansion Project will be constructed as part of Tennessee's existing 200 Line system and will be operated on an integrated basis, it proposes to charge the applicable general system rate under Rate Schedule IT for an interruptible service rendered on the additional capacity made available as a result of the facilities. Consistent with *Transcontinental Gas Pipe Line Corp.*,¹⁰ the Commission concludes that Tennessee's proposal to charge the current system-wide rate for any interruptible service rendered on the additional capacity made available as a result of the expansion is appropriate.

21. Tennessee proposes to use its applicable Rate Schedule FT-A fuel charges for the increased transportation services associated with the proposed expansion. However, Tennessee has not provided information on how addition of the proposed 2,000 hp electric-driven compressor will impact the Electric Power Cost Recovery Adjustment (EPCRA)¹¹ for its existing customers. To the extent that the electric power cost for the project compressor is greater than the existing electric power cost and not offset by increased throughput, the existing customers could be subsidizing the project compression. Therefore, Tennessee is directed to file an analysis within 30 days of this order to demonstrate what impact the new compression will have on its EPCRA.

¹⁰ 124 FERC ¶ 61,160, at P 27-28 (2008), (citing *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 313-14 (2006), and *Gulf South Pipeline Co.*, 122 FERC ¶ 61,162, at P 17 (2008)).

¹¹ Tennessee's certificate application was filed prior to Tennessee's general rate case filed on November 30, 2010, in Docket No. RP11-1566-000. The rate case, among other things, implemented surcharges for two additional tracking mechanisms: a Fuel and Loss Retention Adjustment, which tracks and adjusts for over or under collections of Tennessee's fuel and losses and the EPCRA, which tracks and adjusts for over or under collections of Tennessee's electric power costs. See Sheet Nos. 400, 401 and 402 to Tennessee's FERC Gas Tariff, Sixth Revised Volume No. 1.

C. Non-conforming Provisions

22. Tennessee states that there are several provisions in its precedent agreements with Bay State and Berkshire that do not conform with its *pro forma* Rate Schedule FT-A transportation service agreement (*Pro Forma* Agreement) and requests Commission approval of these provisions.

23. Tennessee states that since Bay State and Berkshire each elected to pay negotiated rates in the Northampton Expansion Project's open season, each was provided the right to extend the 20-year primary term of their respective Firm Transportation Agreements for successive 5-year terms, at the negotiated rate, so long as Bay State and Berkshire provided written notice to Tennessee at least 24 months prior to the end of the primary term of the Firm Transportation Agreement, or the extended term, as applicable. Tennessee believes that it is reasonable to provide the Shippers with this relatively-limited extension provision to address their future capacity needs. Tennessee asserts that this provision was an integral part of the arrangements under which Bay State and Berkshire agreed to provide contractual support for the project. Tennessee contends that it was prepared to offer the same extension rights that it offered to Bay State and Berkshire to any other potential shipper that submitted a qualifying bid during the open season.

24. Tennessee states that Berkshire's precedent agreement contains a provision whereby Tennessee agrees to deliver scheduled gas from the Lateral Line 260A-100 at a minimum pressure of 200 pounds per square inch (psi). Tennessee states that Berkshire requested this provision to allow it to meet its delivery obligations to customers on its distribution system. Tennessee states that it offered to include this minimum pressure requirement in Bay State's precedent agreement, but Bay State declined because the pressure requirement was not necessary for Bay State to meet its delivery obligations to customers on its distribution system. Tennessee contends that it was also prepared to offer the same minimum pressure requirement to any other similarly situated potential shipper who submitted a qualifying bid in the open season. Tennessee contends that, given the nature of this project (expansion of capacity on a pipeline lateral), this minimum pressure requirement will allow Berkshire to meet its delivery obligations to customers on its distribution system without presenting any risk of undue discrimination.

25. In addition, Tennessee states that there will necessarily be a few additional, minor differences between its project service agreements with Bay State and Berkshire and its *pro forma* service agreement. The project transportation agreements will: contain "Whereas" clauses describing the specific transaction; address the commencement date of the agreements; indicate that Tennessee will construct the project facilities; state that the execution of the firm transportation agreements will supersede the precedent agreements; and not contain language through which individual rate components may be adjusted downward or upwards (since the Shippers have agreed to pay negotiated rates).

26. Tennessee states that the executed service agreements with Bay State and Berkshire will provide the firm contractual support for the project and reflect the contractual incentives that were necessary for the Shippers to make binding commitments. Tennessee argues that, absent these contractual commitments, the project would not proceed. Tennessee asserts that, therefore, other shippers or potential shippers cannot be viewed as being similarly situated to Bay State and Berkshire. Tennessee argues that, under the Commission's existing negotiated rate and discount policies, project sponsors may provide rate incentives to shippers on a number of grounds, including volumes to be transported, without constituting undue discrimination. Tennessee argues that, for these reasons, it does not believe that any aspect of the service agreements executed with the shippers, including the minimum pressure requirement discussed above, constitutes a material deviation from the *pro forma* Agreement contained in its tariff.

27. Tennessee argues that, even if the non-conforming provisions in the Shipper's firm transportation agreements are construed to constitute material deviations from Tennessee's *pro forma* Agreement, none of these provisions are unduly discriminatory. Tennessee asserts that these deviations (other than the delivery pressure provision discussed above) simply reflect certain facts about the project, reflect certain justified shipper benefits, and reflect the fact that the services under the firm transportation agreements cannot be provided until necessary authorizations are received and the project facilities constructed. Therefore, Tennessee requests that the Commission review and approve these provisions in the firm transportation agreement for each shipper in this certificate proceeding, subject to Tennessee filing such agreements as specified in Commission regulations or this order.

Commission Response

28. We find that, with the exception of Berkshire's pressure delivery provision, Tennessee has adequately shown how the non-conforming provisions will not affect the terms of service once the pipeline goes into service. Accordingly, with the exception of the Berkshire minimum pressure provision, we find that the proposed non-conforming provisions are permissible in that they do not present a risk of undue discrimination, and will not affect the operational conditions of providing service, nor result in any customer receiving a different quality of service from that available to Tennessee's other customers.¹²

29. The Berkshire pressure provision, however, which requires Tennessee to deliver gas to Berkshire at a minimum pressure of 200 psi, provides Berkshire with rights that are

¹² See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006); and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at 62,345 (2002).

not available to all shippers. Although, as noted above, we have clarified that pipelines may provide incentives to induce sponsoring shippers to commit to a project, we did not extend this policy to include non-rate considerations.¹³ Providing a minimum delivery pressure to Berkshire that other shippers may equally value is contrary to Commission policy. The Commission has held that minimum or maximum pressure provisions relate to the operational conditions of transportation service on the pipeline and affect the quality of service to be received by the shipper.¹⁴ Thus, such provisions may not be negotiated absent a provision in the tariff authorizing such negotiation. Accordingly, Tennessee must either remove this provision from the Berkshire firm transportation agreements or modify its tariff to provide for minimum or mutually-negotiable pressure(s).

30. When a contract deviates materially from the form of service agreement, the contract must be filed and made public.¹⁵ We require disclosure of contracts with material deviations because the public disclosure of these agreements prevents undue discrimination through secret rates or terms. Accordingly, Tennessee must file not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.¹⁶

D. Environmental Analysis

31. On December 21, 2010, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Northampton Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

¹³ See *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100 (2008).

¹⁴ *Dominion Transmission, Inc.*, 113 FERC ¶ 61,152 (2005); *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001).

¹⁵ 18 C.F.R. § 154.1(d) (2011).

¹⁶ We note we are only ruling herein on the specific provisions of the agreements highlighted by Tennessee in its application. The full agreements will be reviewed upon their filing.

32. To satisfy the requirements of the National Environmental Policy Act (NEPA), staff prepared an environmental assessment (EA) for Tennessee's proposal which was placed into the public record on May 27, 2011. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

33. We received comments in response to the NOI from the Bureau of Land Management (BLM),¹⁷ Massachusetts Historical Commission (MHC), Town of Southwick Historical Commission (SHC), and four landowners. MHC and SHC requested an archaeological site protection plan, which Tennessee has submitted.

34. Mr. Andrew Ouimet expressed concern about noise and vibration impacts from the project. Mr. Joseph J. Deedy had similar concern and also expressed concern regarding discharge of gas and odor from the project. Mr. and Mrs. Hamel shared these concerns and were also concerned that Tennessee would access their property, during or after construction, using the portion of Tennessee's existing easement that crosses their property. Mr. Zachary Colson commented about the effect of the project would have on property values and asked how the community would be reimbursed for its loss.

35. Concerning the discharge of gas and odor from the compressor station, the EA states that there would be no air emissions from the electric compressor unit. In addition, the 80-horsepower, natural gas-fired emergency generator is designed for stand-by service only and is estimated to operate only 300 hours per year. The hot water boiler and space heater would operate only for hot water and comfort requirements. Therefore, based on the limited operation of the emergency generator and the intermittent operation of the hot water boiler and space heater, we believe that the air quality impacts would be temporary, localized and insignificant. In addition, since the emergency generator, hot water boiler, and space heater would be fueled by natural gas, the EA concludes that there would be no significant odors from these sources and the project would not result in a significant impact on ambient air quality. The proposed compressor station will be equipped with combustible gas and fire detection alarm systems and an emergency shutdown system. These systems reliably manage the inadvertent release of gas. The compressor station will be designed, constructed, operated, and maintained in accordance with the Department of Transportation Minimum Federal Safety Standards in 49 C.F.R. Part 192. The EA concludes that the project would represent a minimum increase in risk to the public.

¹⁷ BLM indicated that it did not have any jurisdiction or authority with respect to this project, and would not be submitting any comments regarding the project.

36. To address noise issues, Tennessee is designing the compressor station with noise-reduction technology and maintaining existing vegetative buffers, where feasible, to reduce residential exposure to noise from project construction and operation. Noise control treatments include an acoustically-insulated motor/compressor building, pipe lagging, electric-motor cooling air silencers, and low-noise compressor and gas coolers. After installation of the new compressor and the implementation of noise control mitigation measures, the compressor station's contribution to noise at all the nearest Noise Sensitive Areas (NSAs) are predicted to be below the Commission's requirements of 55 decibels (dBA).¹⁸ Therefore, the EA concludes that the project would not create a noise nuisance condition. To verify noise predictions, environmental condition 10 requires Tennessee to file a noise survey no later than 60 days after placing the facilities into operation to confirm that the noise levels are equal to or below 55 dBA. In addition, if the noise attributable to the operation of the compressor station at full load exceeds our requirements, environmental condition 10 requires that Tennessee install additional noise controls and confirm compliance by filing a second noise survey with the Commission, no later than 60 days after it installs the additional noise controls.

37. Commenters also expressed concerns about vibration from the compressor station. The Commission's regulations require that new compressor stations not result in a perceptible increase in vibration at any NSAs.¹⁹ To ensure compliance with this requirement, we have included environmental condition 11, as recommended in the EA and modified herein, requiring Tennessee to notify the Commission in the event that it receives any complaints concerning vibration and to identify the mitigation measures it will implement to address the increase in vibration.

38. Regarding use of the Hamel's property, the EA states that no construction activities related to this project would occur on Mr. and Mrs. Hamel's existing easement and Tennessee has no plans to establish temporary workspace at that location.

39. The compressor station will be located on a parcel of land, approximately 5.32 acres in size, owned entirely by Tennessee. Tennessee intends to utilize approximately 2.82 acres (over 50 percent) of the 5.32-acre parcel as a buffer and for visual screening, both during and post-construction, to minimize noise and visual impact from the project site. The EA concludes that construction and operation of the project would have no significant impact on visual resources due to the rural location of the compressor station site. The EA identifies two residences between 50 and 100 feet of the proposed construction area. To the extent possible, Tennessee will preserve existing trees along the compressor station property boundary abutting Feeding Hills Road to provide visual

¹⁸ 18 C.F.R. § 380.12(k)(4)(v) (2011).

¹⁹ *Id.*

and sound buffers. Maintenance of a vegetated buffer along the roadway should aid in screening views of the site from points along the roadway and existing adjacent residences. Tennessee expects that the only portions of the project site that will be visible from Feeding Hills Road will be the site access driveway and a sign identifying the compressor station site for emergency personnel. Consequently, we do not believe the presence of the compressor station would have a substantial impact on property values of adjacent parcels.

40. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with 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.

41. 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 of facilities approved by this Commission.²⁰

42. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Tennessee is granted permission and approval under NGA section 7(c) to construct, install, operate, and maintain the Northampton Expansion Project, as described in this order and in Tennessee's application.

(B) Tennessee shall construct and make available for service the facilities described herein, within one year of the date of this order.

(C) 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 Tennessee. Tennessee

²⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Tennessee's proposed incremental recourse rates for firm services and applicable general system rate under Rate Schedule IT for any interruptible service on the Northampton Expansion Project are approved. This approval is subject to Tennessee filing, within 30 days of the date of this order, an analysis demonstrating what impact operation of the new compressor will have on the EPCRA for existing customers.

(E) Tennessee is directed to file an actual tariff record to implement its proposed Northampton Expansion Project rates not less than 30 but not more than 60 days prior to the proposed facilities being placed into service.

(F) Tennessee must file not less than 30 days, or more than 60 days before the in-service date of the proposed facilities an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements, consistent with section 154.112 of the Commission's regulations.

(G) Tennessee must execute firm natural gas transportation contracts equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to commencing construction.

(H) The certificate authorization granted by Ordering Paragraph (A) is conditioned on Tennessee's compliance 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.

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. Tennessee shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the Environmental Assessment (EA), unless modified by the Order. 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 include:
 - a. the modification of conditions of the Commission's 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**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would 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 location 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**, 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.

5. **Within 60 days of the acceptance of the Certificate and before construction** begins, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee shall file revisions to the plan as schedules change. The plan shall identify:
- a. how 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 the Order;
 - b. how 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, 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 instruction Tennessee 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 the training sessions);
 - f. the company personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) 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.
6. Beginning with the filing of its Implementation Plan, 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 Tennessee's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, and work planned for the following reporting period;
 - 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 Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
7. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
 8. Tennessee 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 disturbed areas are proceeding satisfactorily.
 9. **Within 30 days of placing the certificated facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Tennessee 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.
 10. Tennessee shall make all reasonable efforts to ensure its predicted noise levels from Compressor Station 260A are not exceeded at nearby NSAs and file noise surveys showing this with the Secretary no later than 60 days after placing Compressor Station 260A in service. However, if the noise attributable to the operation of Compressor Station 260A at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Tennessee shall file a report on what changes are needed and shall install additional noise controls to meet the level within 1 year of the in-service date. Tennessee shall confirm compliance with the requirement by filing a

second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

11. Tennessee shall file a report with the Secretary in the event that it receives any complaints concerning vibration at any NSAs near Compressor Station 260A. The report shall identify how Tennessee proposes to resolve the complaint, including plans for installation of additional vibration control mitigation measures. If any control measures are implemented, Tennessee shall confirm compliance with this requirement by filing a second vibration survey with the Secretary no later than 60 days after it installs the additional vibration controls.