

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Eastern Shore Natural Gas Company

Docket No. CP03-80-001

ORDER AMENDING CERTIFICATE

(Issued June 27, 2005)

1. On December 22, 2004, Eastern Shore Natural Gas Company (Eastern Shore) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting an amendment to the certificate of public convenience and necessity issued by the Commission on October 8, 2003.<sup>1</sup> The October 8, 2003 Order authorized Eastern Shore to construct and operate certain pipeline and measurement facilities in Pennsylvania and Delaware in order to expand system capacity and enhance system reliability. Eastern Shore maintains that since the issuance of that order, the needs of Eastern Shore's customers have changed. Reflecting these changes, Eastern Shore now seeks to amend its authorization by vacating the authorization to construct certain facilities and adding the authority to construct and operate certain other pipeline and measurement facilities not included in the original application. Since Eastern Shore's proposal will provide additional firm transportation capacity and enhance system reliability, we find the proposed amendment to be in the public interest. We will grant Eastern Shore's request to amend its certificate, subject to certain conditions.

**Background and Proposal**

2. Eastern Shore is a natural gas company subject to the jurisdiction of the Commission. Natural gas is received into Eastern Shore's system at interconnections with Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia) in southeastern Pennsylvania and is currently delivered for the account of various customers at points within the States of Delaware, Maryland, and Pennsylvania.

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<sup>1</sup> *Eastern Shore Natural Gas Company*, 105 FERC ¶ 61,049 (2003) (October 8, 2003 Order).

3. Eastern Shore proposes to construct and operate facilities as part of its long-term program of upgrading and expanding its system in order to accommodate existing transportation customers and market growth. Eastern Shore has filed modest expansion projects annually for the last 5 years. In Docket No. CP03-80-000, Eastern Shore proposed to do work in three phases, with facilities to be placed in service by November 1, 2003, November 1, 2004, and November 1, 2005. Phases I and II facilities have been completed and placed into service.
4. In Phase I, Eastern Shore upgraded the Parkesburg Metering and Regulating (M&R) Station in Chester County, Pennsylvania. In Phase II, Eastern Shore constructed 2.7 miles of 16-inch mainline looping in Chester County, Pennsylvania. In Phase III, Eastern Shore is authorized to construct and operate 3.0 miles of 16-inch mainline looping and an M&R station adjacent to Eastern Shore's existing right-of-way in New Castle County, Delaware.
5. Eastern Shore sized its initial Phase I, II, and III proposals based on an open season it conducted from May 1 through May 31, 2002, with several extensions. Eastern Shore had executed precedent agreements for all of the originally proposed capacity with four customers for ten years of firm transportation services (Delmarva Power and Light Company - 3,000 Dth/d, Chesapeake Utilities Corporation-Delaware Division - 7,200 Dth/d, Chesapeake Utilities Corporation-Maryland Division - 900 Dth/d, and PECO Energy Company - 4,000 Dth/d). Since then, changing market conditions have caused certain of Eastern Shore's customers to reevaluate their need for firm capacity and conclude that their earlier requests for capacity were inadequate. This change has been largely driven by a reevaluation of peak season requirements and higher than anticipated customer growth. To address these changing needs, Eastern Shore held another open season which took place between July 16 and August 16, 2004, covering market demand for the 2006-2008 period. The open season resulted in service requests from four customers, representing an increase of 7,450 Dth/d.<sup>2</sup>
6. In the instant filing, Eastern Shore proposes to vacate its authorization to construct and operate the M&R station. Eastern Shore seeks authorization to construct and operate four new pipeline segments totaling 20.98 miles of pipeline of varying diameter pipeline

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<sup>2</sup> Including the incremental service requests covered by the request to amend, the overall project includes the following customers and their requested contract demands: NUI Utilities, Inc. (750 Dth/d); Playtex Products (200 Dth/d); Chesapeake Utilities, Delaware Division (11,700 Dth/d); Chesapeake Utilities, Maryland Division (2,900 Dth/d); PECO Energy Division (4,000 Dth/d); and Delmarva Power (3,000 Dth/d).

in Chester County, Pennsylvania, and New Castle County, Delaware. The facilities are designed to meet incremental market demand resulting from the 2004 open season. Eastern Shore now proposes to construct and operate 1.4 miles of 16-inch mainline looping on Eastern Shore's right-of-way in Chester County, Pennsylvania, paralleling the existing 8-inch mainline; 3.25 miles of 16-inch new mainline and a regulator station in New Castle County, Delaware; 10.33 miles of 6-inch mainline extension from a point near Milford, Delaware, to a point near Milton, Delaware; and 6.0 miles of 6-inch mainline looping, paralleling the existing 6-inch mainline from Laurel, Delaware to Delmar, Delaware.

7. The cost of the facilities proposed in the amendment is estimated at \$9,757,246. Eastern Shore proposes to use internally generated funds together with temporary financing provided by its parent corporation, Chesapeake Utilities Corporation to pay for the proposed facilities.

8. Eastern Shore proposes to charge its existing Rate Schedule FT transportation rate as an initial rate to the firm shippers which have subscribed to the proposed incremental capacity. Eastern Shore asserts that since estimated revenues from the new firm service will exceed the estimated cost of service for the facilities over the long term, its existing customers will not be adversely affected by the project. Eastern Shore asserts that the proposal satisfies the criteria in the Commission's Policy Statement<sup>3</sup> and requests a preliminary determination that the cost of the project qualifies for rolled-in rate treatment. Eastern Shore cites system benefits, stating that the proposal would enhance system reliability and flexibility and meet additional market demand without any adverse rate impact. The application includes a 10-year cost and revenue study which projects that for the first 10-year period of operation of the expansion facilities, cumulative anticipated revenues would exceed the cumulative anticipated cost of service.

### **Notice and Interventions**

9. Public notice of Eastern Shore's application was published in the *Federal Register* on January 12, 2005, 70 Fed. Reg. 2,137 (2005), with comments, protests, and interventions due on or before January 21, 2005. Chesapeake Utilities Corporation and

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<sup>3</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000) (Policy Statement).

Springside LLC filed timely motions to intervene.<sup>4</sup> A timely protest was filed by Easton Utilities Commission of Easton, Maryland (Easton) to which Eastern Shore filed an answer. Generally, answers are not permitted to protests. See 18 CFR § 385.213 (2004). However, the Commission will accept Eastern Shore's answer because it provides information that has assisted us in our decision-making. The protest is discussed below.

### **Discussion**

10. Since the construction and operation of proposed facilities involve the transportation of natural gas in interstate commerce, such proposal is subject to the Commission's jurisdiction under section 7 (c) and (e) of the NGA.

### **Certificate Policy**

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

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the new construction. If residual adverse effects on these interest groups are identified after efforts have been

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<sup>4</sup>Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

<sup>5</sup>*Certification of New Interstate Natural Gas Pipeline*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000) *Facilities (Policy Statement)*.

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 then proceed to complete the environmental analysis where other interests are considered.

13. The October 8, 2003 Order found that Eastern Shore's proposal was in the public interest, consistent with the Commission's Policy Statement. Specifically, we found that the project was responsive to a market need for additional firm service on Eastern Shore's system and the facilities would enhance the flexibility, reliability, and stability of the system. We also found that Eastern Shore had satisfied the threshold no subsidy requirement under the Policy Statement. Here, Eastern Shore has proposed to charge its existing FT rate as the initial rate for service using the incremental capacity created by the proposed facilities. Doing so will not result in a subsidy of the facilities by existing customers. Accordingly, the threshold requirement under the Policy Statement is met.

14. Eastern Shore's system consists of two roughly parallel north-south integrated mainlines, known as the Hockessin Line (the eastern line) and the Parkesburg Line (the western line). As Eastern Shore asserts, the proposal would increase reliability by increasing the design day capacity of the Parkesburg Line, which is considered the more reliable of Eastern Shore's two mainlines and would enhance system reliability by increasing end-of-design-day linepack, which would result in higher pressures throughout the system. Eastern Shore states that the project will complete a critical segment of looping to a location where two distinct Eastern Shore pipelines intersect, thus giving Eastern Shore increased ability to control line-pack levels system-wide.

15. However, the Commission finds that the primary benefits of this project accrue to the shippers who have contracted for the additional firm transportation capacity created by the facilities. As discussed below, rolling the costs of the proposed facilities into Eastern Shore's system-wide rates in its upcoming rate case may well result in subsidization of the expansion by existing customers. Therefore, we will deny Eastern Shore's request for preapproval of rolled-in rate treatment for these facilities.

16. The October 8, 2003 Order also found that the project will have minimal adverse impact. Since the revised project will not displace markets on other pipelines, other pipelines and their customers will not be affected. Eastern Shore expects to negotiate easements for all of the new construction requiring new rights-of-way. Given these factors, we find no basis to disturb our finding in the October 8 Order that, subject to Eastern Shore's compliance with the conditions set forth in these orders, the benefits of

the proposed expansion outweigh any potential adverse effects and, therefore, should be authorized.

17. Eastern Shore's proposal to construct and operate pipeline facilities to expand capacity is responsive to a market need for additional firm service, as evidenced by its open season. This project will also serve to enhance flexibility, reliability, and stability on Eastern Shore's system. Accordingly, we find that Eastern Shore's proposal is required by the public convenience and necessity.

### **Rates**

18. Eastern Shore asserts that the project qualifies for rolled-in rate treatment, as it meets the Commission's threshold no subsidy requirement as enunciated in the Commission's Policy Statement. Using its existing system-wide rates, Eastern Shore's filed Exhibit N reflects a ten-year estimated cost of service of \$27,303,675 with associated estimated revenues of \$28,813,512, thus reflecting a cumulative revenue benefit of \$1,509,837 for the ten-year period.

19. Easton argues that Eastern Shore's Exhibit N does not show that Eastern Shore's revenues will exceed the costs for each of the first ten-years of the project. Easton does not agree with Eastern Shore's contention that this project deserves rolled-in rate treatment as did Eastern Shore's past five expansion projects. Easton states that in the past five expansion projects, projected revenues exceeded costs for each year of the ten-year study provided, while in this case, revenue exceeds costs in only seven of the ten years. Easton notes that Exhibit N shows that for the first three years of full operation (after all facilities are placed in service) annual costs will exceed annual revenues by \$328,684, \$195,993, and \$72,021.<sup>6</sup>

20. Eastern Shore filed an answer to Easton's protest. Eastern Shore states that 1) the rolling in of the proposed facilities will not result in a subsidy by any of its existing customers; 2) the proposed facilities will be integrated with existing facilities on Eastern

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<sup>6</sup> The 10-year period covered by Exhibit N starts with the Phase I facilities being placed into service. The costs associated with all three phases are not reflected until year three. In years one and two, revenues were projected to exceed costs. In year three, when the costs at issue here are added, costs begin to exceed revenues, which continues through years four and five. In year six there is a turnaround, and revenues again exceed costs. This carries through for the remaining years as projected on Exhibit N.

Shore's system; and 3) the proposed facilities will produce additional system-wide benefits.

21. Eastern Shore states that there is nothing in either the Policy Statement or in Eastern Shore's previous cases that suggest that the Commission will preliminarily approve rolled-in rate treatment only in cases where revenues are projected to exceed costs both on a cumulative basis and for every one of the firsts ten years. Eastern Shore cites Williston Basin,<sup>7</sup> arguing that the revenues in that proceeding were not projected to exceed costs in every year of the first ten years. Eastern Shore states that in Williston Basin, the Commission granted the requested authorizations and a preliminary determination in favor of rolled-in rate treatment and neither criticized this approach nor demanded evidence that revenues would exceed costs in every year.

22. Eastern Shore's Exhibit N does, in fact, reflect that for the ten-year projection period as a whole, revenues will exceed total costs using existing approved rates. However, Eastern Shore is required by the provisions of its settlement in Docket No. RP02-34-000, to make a section 4 general rate filing with a proposed effective date of November 1, 2006.<sup>8</sup> In accordance with section 154.303 of the Commission's regulations, the section 4 filing would require Eastern Shore to use for its base and test period, data that would encompass the time frame for Years three and four of the project as shown in Exhibit N. During this time period, as shown in Eastern Shore's Exhibit N, costs would exceed projected revenues. Thus, use of the costs and revenues of this time period to derive rates in the rate case could result in existing shippers subsidizing the cost of the subject project. Consequently, we are denying Eastern Shore's request for a pre-determination for rolled-in treatment. This does not preclude Eastern Shore from the opportunity to demonstrate in the rate case that the facility costs can be rolled into system-wide rates without a resultant subsidization by existing customers. However, Eastern Shore will bear the burden of proof in demonstrating that rolled-in rate treatment is just and reasonable. The Commission will accept Eastern Shore's current rate on file with the Commission as the initial rate for the project.

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<sup>7</sup> *Williston Basin Interstate Pipeline*, 103 FERC ¶ 61,269 (2003) (Williston Basin).

<sup>8</sup> Eastern Shore filed its settlement in Docket No. RP02-34-000 on August 2, 2002. The Commission issued a letter order approving the uncontested settlement on October 10, 2002. 101 FERC ¶ 61,011 (2002).

**Environmental Analysis**

23. On January 31, 2005 we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastern Shore Natural Gas Company Amended 2003-2005 Expansion Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the U.S. Fish and Wildlife Service; U.S. Army Corps of Engineers; Delaware Department on Natural Resources and Environmental Control; Pennsylvania Game Commission; Chester County Planning Commission; Richards, Layton, and Finger on behalf of Springside LLC; and Mike and Trina Wheedleton. Our staff addressed all substantive comments in the environmental assessment (EA).

24. The EA for Eastern Shore's proposal addresses geology, soils, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, land use, visual resources, air and noise quality, reliability and safety, and alternatives.

25. Based on the discussion in the EA, we conclude that if constructed in accordance with Eastern Shore's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

26. 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 or operation of facilities approved by this Commission.<sup>9</sup> Eastern Shore shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

27. At a hearing held on June 27, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application,

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<sup>9</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Eastern Shore 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).

supplements, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission orders:

(A) The certificate of public convenience and necessity issued in Docket No. CP03-80-000 authorizing Eastern Shore to construct and operate facilities is amended, as more fully described in the application and in this order.

(B) Eastern Shore shall complete the construction and place in operation the facilities described herein within one year from the final order in this proceeding, pursuant to section 157.20(b) of the Commission's Regulations.

(C) Eastern Shore is authorized to charge its existing system rates as initial rates for service utilizing the capacity created by facilities authorized by this order. Eastern Shore should maintain its records for the facilities in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(D) This certificate authorization is conditioned on Eastern Shore's compliance with the provisions of all applicable Commission Regulations under the NGA, including but not limited to Part 154 and section 157.20 (a), (c)(1), (c)(3), (c)(4), (e), and (g) of our regulations.

(E) The authorization granted herein is subject to Eastern Shore's compliance with the specific environmental conditions listed in the appendix. Further, Eastern Shore shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

(F) Eastern Shore's certificate authorization to construct and operate an M&R station in New Castle County, Delaware is vacated.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

**Appendix**  
**Eastern Shore Natural Gas Company**  
**Docket No.CP03-80-001**

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

1. Eastern Shore 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. Eastern Shore 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 of the project. This authority shall allow:
  - a. the modifications 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**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation appropriate for 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,** Eastern Shore shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by 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.

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

5. Eastern Shore shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and 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 (route variations required herein or) extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, 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 this certificate and before construction begins, Eastern Shore shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Eastern Shore will implement the mitigation measures required by this Order. Eastern Shore must file revisions to the plan as schedules change. The plan shall identify:

- a. how Eastern Shore will incorporate these requirements into 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;
- b. the number of environmental inspectors assigned per project area, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- c. company personnel, including environmental inspector and contractors, who will receive copies of the appropriate material;
- d. what training and instruction Eastern Shore 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 session(s);
- e. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
- f. the procedures (including the use of contract penalties) Eastern Shore will follow if noncompliance occurs; and
- g. 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 mitigation training of onsite personnel;
  3. the start of construction; and
  4. the start and completion of restoration.

7. Eastern Shore shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
  
8. Eastern Shore shall file updated status reports prepared by the (head) environmental inspector with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, 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. the current 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;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector 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);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Eastern Shore from other federal, state or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.

9. Eastern Shore must receive written authorization from the Director of OEP before commencing service on each segment of its project, respectively. Such authorization will only be granted following a determination that rehabilitation and restoration of the sites are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Eastern Shore 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 Eastern Shore has complied with or will comply with. This statement shall also identify any areas along the ROW where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Eastern Shore should not begin construction activities until:
  - a. the staff receives comments from the U.S. Fish and Wildlife Service (USFWS) regarding the proposed action;
  - b. the staff completes formal consultation with the USFWS, if required; and
  - c. Eastern Shore has received written notification from the Director of OEP that construction or use of mitigation may begin.
12. Eastern Shore defer construction and use of facilities and staging, storage, and temporary work areas until:
  - a. Eastern Shore files the Delaware State Historic Preservation Officer's (SHPO) comments on the Delaware report and the Addendum report; and
  - b. the Director of OEP notifies eastern Shore in writing that it may proceed.

All material 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. Eastern Shore shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. Prior to construction, Eastern Shore shall mail the complaint procedures to each landowner whose property would be crossed by the project.

- a. In its letter to affected landowners, Eastern Shore shall:
  1. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
  2. instruct the landowners that, if they are not satisfied with the response, they should call Eastern Shore's Hotline; the letter should indicate how soon to expect a response; and
  3. instruct the landowners that, if they are still not satisfied with the response from Eastern Shore's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  
- b. In addition, Eastern Shore shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
  1. the date of the call;
  2. the identification number from the certificated alignment sheets of the affected property;
  3. the description of the problem/concern; and
  4. an explanation of how and when the problem was resolved, would be resolved, or why it has not been resolved.