

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Texas Eastern Transmission LP

Docket No. CP06-115-000

ORDER ISSUING CERTIFICATE  
AND GRANTING ABANDONMENT AUTHORITY

(Issued June 8, 2007)

1. On April 4, 2006, Texas Eastern Transmission, LP (Texas Eastern) filed an application requesting a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) to construct and operate certain compression and pipeline facilities in Ohio and Pennsylvania and for permission and approval pursuant to section 7(b) and 7(c) of the NGA to abandon and replace certain pipeline facilities in Ohio and Pennsylvania, comprising the Time II Project.
2. The Commission is granting Texas Eastern's requested certificate and abandonment authorization, subject to the conditions set forth herein.

**I. Background and Proposal**

3. Texas Eastern requests authorization to abandon by removal approximately 28 miles of pipeline loop along Texas Eastern's system in Ohio and Pennsylvania, including (1) 6.44 miles of 24-inch pipeline in Somerset and Bedford Counties, Pennsylvania; (2) 4.85 miles of 24-inch pipeline in Franklin County, Pennsylvania; (3) 10.35 miles of 20-inch pipeline in Bucks County, Pennsylvania; and (4) 6.25 miles of 24-inch pipeline in Pickaway County, Ohio. To replace these facilities, Texas Eastern seeks a certificate to construct and operate its Time II Project in 2007 and 2008. Specifically, in 2007, Texas Eastern proposes to construct: (1) 6.44 miles of 36-inch diameter pipeline replacement in Somerset and Bedford Counties, Pennsylvania; (2) 4.85 miles of 36-inch diameter pipeline replacement in Franklin County, Pennsylvania; (3) 10.35 miles of 36-inch diameter pipeline replacement in Bucks County, Pennsylvania; and (4) a new 16,000 HP electric compression unit and compressor station in Heidlersburg, Pennsylvania. In 2008, Texas Eastern proposes to construct: (1) 6.25 miles of 36-inch diameter pipeline replacement in Pickaway County, Ohio; (2) 4.02 miles of new 36-inch diameter looping pipeline in Monroe County, Ohio; and (3) a new 16,000 HP electric compression unit at the existing Uniontown, Pennsylvania compressor station.

4. Texas Eastern's parent company, Duke Energy Gas Transmission (Duke),<sup>1</sup> conducted an open season in the fall of 2004. As a result of this open season, Texas Eastern's entered into precedent agreements for firm transportation service with: NJR Energy Services Company (NJR) for up to 150,000 Dth per day for a one-year term commencing November 2007; New Jersey Natural Gas Company (New Jersey Natural) for up to 100,000 Dth per day for a 15-year term commencing November 2008; and PSEG Power, LLC (PSEG) for up to 50,000 Dth per day for a 10-year term commencing November 2008. Texas Eastern conducted a reverse open season from January 23, 2006 through February 3, 2006. None of Texas Eastern's customers expressed a willingness to turn back the requested capacity.

5. Texas Eastern proposes incremental recourse rates designed to recover the estimated \$170,329,491 cost of the Time II Project facilities. The proposed rates are derived from Texas Eastern's cost of service settlement in Docket Nos. RP98-198-000,<sup>2</sup> adjusted to reflect the current 35 percent federal income tax rate and Texas Eastern's existing onshore transmission depreciation rate of 1.22 percent.

## II. Interventions

6. Notice of Texas Eastern's application was published in the Federal Register on April 24, 2006.<sup>3</sup> Timely motions to intervene were filed by Equitable Gas Company (Equitable); the Municipal Defense Group;<sup>4</sup> the PSEG Companies;<sup>5</sup> New Jersey Natural jointly with NJR (New Jersey Natural and NJR); the East Ohio Gas Company, d/b/a

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<sup>1</sup> On January 12, 2007, Spectra Energy Corporation filed in Docket No. RP07-132-000 to revise Texas Eastern's FERC Gas Tariff to reflect a corporate identity change, effective January, 1, 2007, at which time Duke Energy Corporation divested certain interests, including Texas Eastern, forming a new corporate entity, Spectra Energy Corporation.

<sup>2</sup> *Texas Eastern Transmission Corporation*, 84 FERC ¶ 61,200 (1998).

<sup>3</sup> 71 Fed. Reg. 21,006.

<sup>4</sup> The Municipal Defense Group consists of the following distributor customers: Batesville, Indiana; Cairo Public Utility Company, an Illinois not-for-profit corporation; Gloster, Mississippi; Harrisburg, Arkansas; Horton Highway Utility District, Tennessee; Huntingburg, Indiana; Loretto, Tennessee; Middleborough, Massachusetts, Municipal Gas and Electric Department; Norwich, Connecticut, Department of Public Utilities; and Utica, Mississippi.

<sup>5</sup> The PSEG companies include PSEG Power LLC and PSEG Energy Resources & Trade, LLC.

Dominion East Ohio, and the Peoples Natural Gas Company, d/b/a Dominion Peoples; Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Philadelphia Gas Works; Key Span Delivery Companies;<sup>6</sup> the New England Local Distribution Companies;<sup>7</sup> National Fuel Gas Distribution Corporation; Atmos Energy Corporation; Dominion Transmission, Inc.; PECO Energy Company; Columbia Gas of Pennsylvania; and ProLiance Energy, LLC.<sup>8</sup> Doyestown Township, Pennsylvania, Solebury Township, Pennsylvania and Buckingham Township, Pennsylvania filed untimely motions to intervene.<sup>9</sup> We will grant these motions, since to do so at this stage of the proceeding will not delay, disrupt, or otherwise prejudice the proceeding or other parties.<sup>10</sup>

7. The Municipal Defense Group requests that the Commission, as it has done before, condition its certificate order to provide that should Texas Eastern propose to roll-in these project costs at a future date, it will have the burden of either demonstrating that actual revenues exceed the costs so that Texas Eastern's existing customers will not subsidize the project or demonstrating that circumstances have changed in some way to warrant rolled-in rate treatment.

### **III. Discussion**

8. Since the facilities proposed to be abandoned by Texas Eastern have been used for the transportation of natural gas in interstate commerce and Texas Eastern's proposed

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<sup>6</sup> The KeySpan Delivery Companies include The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; Boston Gas Company; Colonial Gas Company; EnergyNorth Natural Gas, Inc.; and Essex Gas Company.

<sup>7</sup> The New England Distribution Companies include Bay State Gas Company, Connecticut Natural Gas Corporation, New England Gas Company, Northern Utilities, Inc., NSTAR Gas Company, the Southern Connecticut Gas Company, and Yankee Gas Services Company.

<sup>8</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2007).

<sup>9</sup> Soleburg Township's and Buckingham Township's motions included comments raising environmental concerns relating to, inter alia, metallic content of soils, noise levels, disruption of wetlands and public safety. The Townships' comments were addressed in the environmental assessment issued on March 30, 2007. Neither Township filed any further comments.

<sup>10</sup> 18 CFR § 385.214(d) (2006).

facilities will be used in interstate commerce, the abandonment and construction and operation of the facilities and services are subject to the jurisdiction of the Commission and to the requirements of NGA subsections 7(b), (c) and (e).

**A. Application of the Policy Statement**

9. The Commission's September 15, 1999 Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.<sup>11</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, and the avoidance of unnecessary exercise of eminent domain or other disruptions of the environment.

10. Under this policy, the threshold requirement for existing 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 effects the project might have on the applicants 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 after a proposed project's benefits outweigh its adverse effects on economic interests will the Commission proceed to complete the environmental analysis, in which other interests are considered.

11. As discussed below, Texas Eastern has proposed incremental rates to recover the costs of the Time II Project. Thus, the proposal will not result in subsidization from Texas Eastern's existing customers. Further, we find the proposed new expansion will not result in any degradation of service to Texas Eastern's existing customers. Accordingly, Texas Eastern's existing customers will not be adversely affected. Nor do we believe the project will have an adverse impact on other pipelines and their customers. The proposed project will meet increasing demand for natural gas in the New Jersey market not currently served by any other pipeline. Finally, we believe that any impacts

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<sup>11</sup> *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,277 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

on landowners will be minimal. Texas Eastern states that, to the extent practicable, it will use existing rights-of-way and previously disturbed property. Thus, we find that Texas Eastern's proposal satisfies the criteria of the Policy Statement.

12. Texas Eastern's proposed expansion will allow it to provide additional transportation capacity to serve increasing market demand. Accordingly, we find that approval of Texas Eastern's proposed project is required by the public convenience and necessity, subject to the conditions set forth herein.<sup>12</sup>

### **B. Rates**

13. Texas Eastern entered into a one-year precedent agreement with NJR for the full 150,000 Dth/d of Time II Project additional firm capacity, beginning in November 2007. Texas Eastern also entered into a fifteen-year precedent agreement with New Jersey Natural for 100,000 Dth/d of service beginning November 2008, and a ten-year precedent agreement with PSEG Power, LLC (PSEG) for 50,000 Dth/d of service commencing November 2008.

14. NJR, New Jersey Natural and PSEG have agreed to negotiated rates under Texas Eastern's FT-1 Service Agreement, in accordance with the negotiated rate authority contained in section 29 of the General Terms and Conditions (GT&C) of Texas Eastern's FERC Gas Tariff. Texas Eastern based its proposed recourse rates on a \$170,329,491 incremental cost-of-service of the new facilities to be constructed during 2007 and 2008. The \$170,329,491 comprises \$116,720,134 of 2007 project costs and \$53,609,359 of 2008 project costs. Texas Eastern proposes an initial recourse reservation rate of \$13.007/Dth for a one-year period commencing in November 2007, and an initial recourse rate of \$19.658/Dth for service commencing November 2008, exclusive of incremental fuel, which will be recovered through fuel retention. These rates reflect Texas Eastern's existing onshore system depreciation rate of 1.22 percent, a return-on-equity of 12.75 percent, and an overall rate of return of 12.13 percent. Texas Eastern states that the revenues associated with the transportation service arrangements executed pursuant to the precedent agreements will allow it to construct the Time II Project facilities without any subsidization from existing customers and that none of the Time II Project costs are included in Texas Eastern's currently effective rates.

15. The Commission's cost-of-service analysis shows that the proposed rates for service provided over the Time II Project facilities are reasonable, provided that the customers benefiting from the service using the Time II Project facilities bear all the costs

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<sup>12</sup> Consistent with Commission practice, we will condition Texas Eastern's certificate authority to require that, prior to commencement of construction, it execute final contracts for firm transportation volumes equivalent to those represented by its precedent agreements.

attributable to the use of such facilities, including fuel, electric, and all surcharges. We will approve a reservation charge of \$13.007/Dth as the November 2007 through October 31, 2008 incremental recourse rate, and a \$19.658/Dth reservation rate as the incremental recourse rate beginning in November 2008 under Rate Schedule FT-1, which will be subject to adjustments for the full costs of fuel, electric and applicable surcharge accounts.<sup>13</sup> The 100 percent load factor rate will be \$0.4276/Dth for November 2007 through October 31, 2008, and \$0.6463 beginning in November 2008, subject to all applicable charges and surcharges under Rate Schedule FT-1.

16. The Commission will require Texas Eastern to maintain its accounts for these facilities in accordance with section 154.309 of the Commission's regulations. Texas Eastern states that it will maintain a separate record of capital costs for the Time II Project in its books and accounts. Additionally, between 30 and 60 days prior to the anticipated date of commencement of service on the Time II Project facilities, Texas Eastern is required to file appropriate tariff sheets reflecting the incremental rates based upon the actual cost of construction known at the time.

17. Texas Eastern proposes to use its existing 1.22 percent onshore depreciation rate. This is substantially lower than the depreciation rate which would be derived from using its precedent agreement time frames. To the extent Texas Eastern is unable to contract for the additional Time II Project capacity at the expiration of the agreements, Texas Eastern will not be allowed to recover these costs from existing system customers.

18. Texas Eastern states that its customers have agreed to a negotiated rate for service under the FT-1 Service Agreement in accordance with the negotiated rate authority contained in section 29 of its GT&C. Texas Eastern's negotiated rate must conform with the guidelines for negotiated rates as articulated in the Commission's Alternative Rate Policy Statement.<sup>14</sup> Under that policy, as affirmed by the Commission in *NorAm Gas Transmission Company*,<sup>15</sup> any revenue shortfall due to a negotiated rate lower than the

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<sup>13</sup> Currently, the surcharge accounts in section 15 of Texas Eastern's GT&C provide for adjustments for electric power, research and development, the Gas Research Institute, the Annual Charge Adjustment, and the Applicable Shrinkage Adjustment.

<sup>14</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition 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).

<sup>15</sup> *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996) (*NorAm*).

incremental recourse rate cannot be recovered from existing shippers.<sup>16</sup> Further, consistent with *NorAm*, Texas Eastern is required to file either its negotiated rate contracts or numbered tariff sheets between 30 and 60 days prior to the commencement of service on the Time II Project facilities, stating the following information for each shipper paying a negotiated rate: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; and (6) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of the service agreement in the tariff. Texas Eastern must also disclose all consideration linked to the agreements.<sup>17</sup> In addition, Texas Eastern is required to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.

19. Texas Eastern must match the cost of service to the customers benefiting from the service. In order to track accurately the charges and surcharges resulting from the incremental service using the Time II Project facilities, Texas Eastern is directed to make adjustments in its tracking mechanisms as necessary to ensure that existing customers do not subsidize the costs resulting from this new incremental service. This includes insuring that actual deviations from its estimated power costs related to the Time II Project included in the recourse rates are recovered from the Time II shippers through its periodic tracker mechanism in place prior to commencement of Time II service.<sup>18</sup> Shippers can review these costs included in Texas Eastern's periodic rate adjustment tracker filings.

20. Municipal Defense Group does not oppose the pipeline's request for certificate authorization, but it notes that the application does not state the revenues projected to be generated from the project or the three shippers' negotiated rates. Municipal Defense Group acknowledges that the project can have no economic impact on existing shippers in the short run because Texas Eastern has filed for incremental recourse rates. Municipal Defense Group asserts, however, that the costs of this construction may at some time be at issue in a future rate proceeding. Accordingly, Municipal Defense Group requests that the Commission condition Texas Eastern's certificate order to

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<sup>16</sup> Commission policy regarding no discount adjustments for negotiated rates requires Texas Eastern to use the maximum rate for these negotiated rate services in its next general section 4 rate case. See *NorAm Gas Transmission Company*, 83 FERC ¶ 61,047 (1998), *order on rehearing*, 86 FERC ¶ 61,109 (1999).

<sup>17</sup> *Columbia Gulf Transmission Company*, 85 FERC ¶ 61,373 (1998).

<sup>18</sup> See *Kern River Gas Transmission Company*, 98 FERC ¶ 61,205 (2002).

provide that should Texas Eastern propose at a future date to roll the project's costs into generally-applicable rates, it will have the burden of either demonstrating that actual revenues exceed the costs so that Texas Eastern's existing customers will not subsidize the project or demonstrating that circumstances have changed in some way to warrant rolled-in rate treatment.<sup>19</sup>

21. The Commission will condition Texas Eastern's certificate as Municipal Defense Group requests. Texas Eastern has proposed, and we are granting, incremental rate treatment for the Time II Project. Should Texas Eastern propose to roll in the project costs at a future date, it will have the burden of demonstrating that such a roll in will not result in Texas Eastern's existing customers subsidizing the expansion project.

### C. Environmental

22. On May 26, 2006, the Commission's staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Texas Eastern Incremental Market Expansion II Project and Request for Comments on Environmental Issues (NOI). Fifteen comments were received during the scoping period.

23. Our staff prepared an environmental assessment (EA) for Texas Eastern's proposal. The EA was issued and placed in the record of this proceeding on March 30, 2007, with comments on the EA due by April 30, 2007. The EA addressed geology and soils, water resources, wetlands, vegetation and wildlife, threatened and endangered species, land use, cultural resources, socioeconomics, air quality and noise, safety and reliability, and alternatives. The EA also addressed all substantive comments received in response to the NOI and the comments related to the environmental aspects of the proposed project filed in response to the notice of Texas Eastern's application.<sup>20</sup>

24. After applying our four-factor procedure for determining the need to include non-jurisdictional facilities in our environmental review,<sup>21</sup> we have determined that First Energy Corporation's facilities are not subject to our review.<sup>22</sup>

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<sup>19</sup> *Citing Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258 at p. 61,903 (2001).

<sup>20</sup> As noted above, the EA addressed comments included in the motions to intervene filed by Buckingham Township and Solebury Township.

<sup>21</sup> *Algonquin Gas Transmission Company*, 59 FERC ¶ 61,255 (1992).

<sup>22</sup> First Energy's non-jurisdictional facilities consist of an 8,000-foot, high-voltage electric transmission line to provide power to the Heidlersburg Compressor Station.

25. We received comments in response to the EA from Charles F. and Eileen S. Koch, Richard B. and Hilary R. Sherker, the Tyrone Township supervisors, the Tyrone Township solicitor, Solebury Township, the U.S. Fish and Wildlife Service (USFWS), and the National Park Service (NPS). Texas Eastern responded to all comment letters in separate filings.

26. The two landowners' comments on the EA concern the proposed removal of trees on their property in Bucks County, Pennsylvania. Texas Eastern's response explains why it requires the temporary work space and would need to clear the trees. Texas Eastern has agreed to reduce the 50 foot temporary working space to 25 feet on the property of Richard and Hilary Sherker. Texas Eastern has also agreed to pay for any damages to stock, crops, fences, timber, and land resulting from construction. Texas Eastern has stated its goal is to restore the disturbed area to a condition equal to its pre-construction condition.

27. Charles and Eileen Koch claim Texas Eastern was in error regarding the location of its easement. In response, Texas Eastern's representatives visited the landowner's property and performed actual verifications of the pipeline location. Texas Eastern reported that the new right-of-way limits were within inches of the original stakes. The landowner has agreed to the new right-of-way boundaries on his property.

28. The Tyrone Township supervisors and solicitor filed comments about the Heidlersburg Compressor Station. Specifically they expressed concerns that the proposed project would not provide jobs, that it might have an adverse effect on other potential employment opportunities, that it would result in timber loss, and that there are more beneficial alternative locations for the proposed compressor.

29. Texas Eastern states that it will select a construction contractor based on the specialized skills and experience required for the job. The contractor may or may not need to employ new personnel in order to complete the construction. Similarly, should Texas Eastern need to hire new employees to run the compressor station, such hires will be made on the basis of skills and experience.

30. The EA finds there will be local economic benefits from the Heidlersburg Compressor Station and associated pipeline in the form of property taxes and other revenues. Additionally, the pipeline could be used in the future to supply gas to customers (new or existing local distribution companies and/or industrial customers) in the area and along the Highway Commercial Corridor. The EA discusses three alternative compressor station locations that were reviewed and found not to be environmentally preferable to the proposed location.

31. Texas Eastern is negotiating a compensatory agreement with the individual landowner for acquisition of the Heidlersburg Compressor Station site. Texas Eastern

plans to purchase the entire parcel from the landowner as well as provide compensation for loss of non-renewable or other resources.

32. We received comments from the USFWS indicating that they would like to comment on any frac-out contingency plan that Texas Eastern develops for crossing Big Darby Creek in Pickaway County, Ohio. Texas Eastern committed in previous meetings with the Commission, NPS, and USFWS to continue to develop the frac-out contingency plan and provide it to all the agencies for comment.

33. The USFWS commented on Texas Eastern's proposal to develop a propagation and relocation plan for listed mussels. Environmental condition 13 recommended by the EA and set forth in the appendix to this order requires Texas Eastern to file such a plan prior to beginning any mussel surveys or relocations in Big Darby Creek. Texas Eastern indicated in its response to the comment that it would perform mussel surveys, relocation, and post-construction monitoring within a 2000-foot long segment (500-feet upstream and 1500-feet downstream of the proposed crossing location) of Big Darby Creek in preparation for the proposed horizontal directional drill (HDD) activities. Texas Eastern has also coordinated with Dr. Tom Watters of Ohio State University to develop a mussel propagation protocol which proposes to utilize gravid female mussel specimens located during the survey to generate new juvenile mussels which will be reintroduced to Big Darby Creek following construction.

34. The USFWS indicated that they would also like to review Texas Eastern's revegetation plan for the perennial tributaries of Big Darby Creek prior to Texas Eastern finalizing it. In its response to the comment, Texas Eastern it will provide a copy of the proposed plan to the USFWS for their review and comment.

35. The USFWS and NPS stated that they are opposed to the use of Big Darby Creek as a source of hydrostatic test water and that they support the placement and stockpile of spoil material outside of the floodplain. Environmental condition 19 of the EA prohibits Texas Eastern from utilizing any water from Big Darby Creek. Texas Eastern agreed in its response to USFWS comments that it will obtain water from sources other than Big Darby Creek to conduct drilling operations and hydrostatic testing. Texas Eastern has also stated that there are no official, mapped floodplain boundaries associated with the proposed crossing locations of the two perennial tributaries to Big Darby Creek. Texas Eastern will utilize their Erosion & Sedimentation Control Plan (E&SCP) regarding spoil storage adjacent to the perennial tributaries.

36. The USFWS suggests Texas Eastern develop an invasive species control plan for Ohio construction and indicates that they would be available to assist with seed mix recommendations and with invasive species control recommendations for the project.. Texas Eastern's E&SCP, stipulates the company must obtain written recommendations from the local soil conservation authorities or land management agencies regarding

permanent erosion control and revegetation specifications and develop specific procedures in coordination with the appropriate agency to prevent the introduction or spread of noxious weeds and soil pests resulting from construction and restoration activities. Texas Eastern indicated in its response to this comment that it will coordinate with the USFWS regarding seed mix recommendations.

37. The NPS commented on the risk and impacts of a possible frac-out on the proposed HDD of Big Darby Creek; alternative routes that would avoid the proposed Big Darby Creek crossing location; and surveys, relocation, and propagation of sensitive mussel species in Big Darby Creek. These comments were addressed in the EA. Specifically, risk and impacts of a possible frac-out on the proposed HDD of Big Darby Creek were discussed in sections B 2.1.2.1, 2.2, and 3.3.1 and Texas Eastern's plans for mussel species were discussed in sections B 2.1.2.1 and 3.3. Environmental condition 18 in the appendix to this order requires Texas Eastern to complete its consultation with the NPS concerning the crossing of Big Darby Creek and its tributaries. Any outstanding concerns of the NPS would be addressed during this consultation. Texas Eastern stated in its response that it will also complete surveys, relocation, and propagation measures for all mussel species.

38. Staff's alternative analysis (EA section 3) evaluated two alternative routes that would avoid the proposed location of the HDD crossing of Big Darby Creek. The EA concluded that these two alternatives, a 60-mile pipeline and a 20-mile pipeline, are not reasonable for a 6.3 mile replacement project and would result in greater environmental impacts than the proposed HDD of Big Darby Creek. This EA analysis took into account costs, existing technologies, logistics, technical and economical feasibility, as well as environmental aspects when comparing each alternative to the proposed action.

39. Through the application of evaluation criteria and subsequent environmental comparisons, each alternative was considered to a point where it was clear the alternative was not reasonable or would result in significantly greater environmental impacts that could not be readily mitigated.

40. The NPS comments include a recommendation that the Commission prepare an environmental impact statement in order to fully explore and disclose project impacts. An EA is a concise public document, for which a federal agency is responsible, that serves to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.<sup>23</sup> As discussed in the EA and below, the Commission has determined that the impacts associated with this project can be sufficiently mitigated to support a finding of no significant impact.

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<sup>23</sup> See 40 C.F.R. § 1508.9 (2006).

41. In its April 4 and 5, 2007 filings, Texas Eastern filed an alternate location for the above ground facilities for Eagle Discharge, a supplemental survey report for the new location of the facilities, and the comments of the Pennsylvania State Historic Preservation Office (SHPO) on that report. The report found that the new location for the above ground facilities would have no effect on historic or archaeological resources. We have reviewed the report and concur with the SHPO. Thus, the requirements of Environmental Condition Number 21 (b-f) recommended by the EA have been met and are not included in this order.

42. Based on the discussion in the EA, we conclude that if constructed or replaced in accordance with Texas Eastern's application and supplements and the conditions imposed in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

43. Any state or local permits issued with respect to facilities subject to the jurisdiction of this Commission must be consistent with the conditions of any certificates issued by this Commission authorizing construction and operation of those facilities. The Commission's practice is to encourage cooperation between interstate pipelines and local authorities. This does not mean, however, that state and local agencies, through application of state or local law, may prohibit or unreasonably delay the force and effect of a certificate issued by this Commission.<sup>24</sup> Texas Eastern shall notify the Commission's environment 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 Texas Eastern, and file written confirmation of such notification with the Secretary of the Commission within 24 hours.

#### **D. Conclusion**

44. The Commission on its own motion, received and made a part of the record in these proceedings all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

##### The Commission orders:

(A) Texas Eastern is granted permission and approval under NGA section 7(b) to abandon facilities described herein and in Texas Eastern's application, subject to the conditions set forth herein.

(B) Texas Eastern shall notify the Commission within 10 days of the

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<sup>24</sup>See, e.g., *Schneidewind v. ANR Pipeline Company*, 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.*, 59 FERC ¶61,094 (1992); and 52 FERC ¶61,091 (1990).

abandonment of facilities authorized in a final order in this proceeding.

(C) Texas Eastern is granted a certificate of public convenience and necessity under NGA section 7(c) authorizing the construction and operation of its proposed facilities as described herein and more fully in Texas Eastern's application.

(D) The certificate granted by this order is conditioned on the following:  
(1) compliance with all parts of the Commission's regulations, particularly Parts 154, 157, and 284, and paragraphs (a), (c), (e) and (f) of section 157.20 of the regulations; and (2) completion of construction within two years from the date of this order, in accordance with section 157.20(b) of the Commission's regulations.

(E) Texas Eastern must execute firm contracts for amounts equivalent to the volumes specified in the precedent agreements prior to commencing construction of the proposed facilities.

(F) The authorization granted herein is subject to Texas Eastern's compliance with the specific environmental conditions listed in the Appendix to this order. Further, Texas Eastern shall notify the Commission, by telephone and/or facsimile of any environmental non-compliance identified by other Federal, state or local agencies on the same day that such agency notifies Texas Eastern, and file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) Texas Eastern's proposed incremental recourse rates are approved. In the event Texas Eastern proposes to roll in these project costs at a future date, it will have the burden of demonstrating that such a roll in will not result in Texas Eastern's existing customers subsidizing this expansion project.

(H) Texas Eastern is required to file appropriate tariff sheets reflecting the incremental rates based upon the actual cost of construction known at the time between 30 and 60 days prior to the anticipated date of commencement of service on the Time II Project facilities.

(I) Texas Eastern is required to credit the full fuel, electric, and surcharge amounts to the appropriate fuel, electric, and surcharge accounts for the negotiated services it will provide using the Time II Project facilities to avoid cross subsidy issues concerning existing customers. To the extent the electric costs and fuel shrinkage exceed the costs included in the incremental recourse rates for the Time II Project, Texas Eastern will not be allowed to recover the excess from existing system customers.

(J) Texas Eastern is required to file either its negotiated rate contracts or

numbered tariff sheets between 30 and 60 days prior to the commencement of service on the Time II Project facilities, stating the following information for each shipper paying a negotiated rate: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; and (6) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of the service agreement in the tariff. Texas Eastern must also disclose all consideration linked to the agreements. In addition, Texas Eastern is required to maintain separate and identifiable accounts for volumes transported, billing determinates, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.

(K) In order to track accurately the charges and surcharges resulting from the incremental service using the Time II Project facilities, Texas Eastern is directed to make adjustments in its tracking mechanisms as necessary to ensure that existing customers do not subsidize the costs resulting from this new incremental service.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## APPENDIX A

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

1. Texas Eastern shall follow the construction procedures and mitigation measures described in its application and supplements including responses to staff data requests and as identified in the EA, unless modified by the Order. Texas Eastern must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction
3. Prior to any construction, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (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, and shall include all of the staff's recommended facility locations identified in the EA. As soon as they are available, and before the start of construction, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Texas Eastern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, 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 Texas Eastern's E&SCP and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. Within 60 days of the acceptance of the certificate and prior to construction, Texas Eastern shall file an initial Implementation Plan with the Secretary for review and

written approval by the Director of OEP describing how Texas Eastern will implement the mitigation measures required by the Order. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. the training and instructions Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change).
  - e. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Texas Eastern 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. Texas Eastern shall file updated status reports prepared by the head EI with the Secretary on a weekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, 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 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);

- 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 the Order, and the measures taken to satisfy their concerns; and copies of any correspondence received by Texas Eastern from other federal, state or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
8. Texas Eastern 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, Texas Eastern shall mail the complaint procedures to each landowner whose property would be crossed by the project.
- a. In its letter to affected landowners, Texas Eastern 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 Texas Eastern'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 Texas Eastern's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  - b. In addition, Texas Eastern 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, will be resolved, or why it has not been resolved.

9. Texas Eastern shall employ at least one EI per construction spread. The EI shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
10. Texas Eastern must receive written authorization from the Director of OEP before commencing service from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas affected by the project are proceeding satisfactorily.
11. Within 30 days of placing the certificated facilities in service, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed/installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Texas Eastern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Texas Eastern shall amend its Erosion and Sedimentation Control Plan to include compaction testing and mitigation if testing indicates soils are compacted in residential areas.
13. Prior to beginning any mussel surveys and relocations, Texas Eastern shall file a Mussel Survey, Relocation, and Propagation Plan developed in coordination with

- the USFWS that details the agency-recommended procedures for surveys, mussel relocation, mussel propagation (including standards of success), any recommended mitigation measures, and long-term monitoring plans. Texas Eastern shall not begin construction on the Five Points Discharge until:
- a. the FERC reviews the Mussel Survey, Relocation, and Propagation Plan;
  - b. the staff completes formal consultation with the Ohio USFWS for the clubshell mussel and northern riffleshell mussel; and
  - c. Texas Eastern has received written notification from the Director of OEP that construction or use of mitigation/avoidance measures may begin.
14. Texas Eastern shall file the results of its Indiana bat telemetry surveys along with any USFWS comments on the survey results. The survey results must include a qualitative and quantitative analysis of the potential Indiana bat habitat that would be cleared for the project and the location of any potential maternity roost trees in the construction corridor. Texas Eastern shall not begin construction on the Five Points Discharge until:
- a. staff has reviewed the results of the telemetry surveys, habitat analysis, and any comments from the USFWS regarding the proposed action;
  - b. the staff completes any necessary consultation with the USFWS for the Indiana bat; and
  - c. Texas Eastern has received written notification from the Director of OEP that construction or use of mitigation may begin.
15. Prior to construction of the Five Points Discharge, Texas Eastern shall file with the Secretary the results of the surveys for state-listed mussels and describe the mitigation that it would implement to protect these species.
16. Texas Eastern shall not begin construction of the Five Points Discharge until the HDD crossing of Big Darby Creek has been successfully completed.
17. If Texas Eastern cannot successfully use HDD at the proposed crossing location of Big Darby Creek, it shall file for the review and written approval of the Director of OEP, an Alternative Crossing Plan that includes documentation of consultation with the NPS, as appropriate.
18. Texas Eastern shall complete its consultation with the NPS and file its final construction and restoration plan for the perennial tributaries of Big Darby Creek before beginning construction of these stream crossings.

19. Texas Eastern shall not use Big Darby Creek as a water source for the project (e.g., for hydrostatic test water, dust control, or making drilling mud).
20. For any residence closer than 25 feet to the construction work area, Texas Eastern shall file a site-specific plan with the Secretary for the review and written approval of the Director of OEP before construction. The plan shall include:
  - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
    - (1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
    - (2) the edge of the construction work area;
    - (3) the edge of the new permanent ROW; and
    - (4) other nearby residences, structures, roads, or waterbodies.
  - b. a description of how Texas Eastern will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
  - c. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence.
21. Texas Eastern shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads until:
  - a. Texas Eastern files the Pennsylvania SHPO's comments on the Phase I survey report and supplemental survey report for Pennsylvania;
  - b. The Advisory Council on Historic Preservation(ACHP) is afforded an opportunity to comment, if historic properties would be adversely affected; and
  - c. The Director of OEP reviews and approves all reports and plans and notifies Texas Eastern in writing that it may proceed with any treatment or construction.

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."

22. Texas Eastern shall file a noise survey with the Secretary no later than 60 days after placing the authorized equipment at the Uniontown and Heidlersburg compressor stations in service. If the noise attributable to the operation of all of the equipment at Uniontown and Heidlersburg compressor stations at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, Texas Eastern shall file a report on what changes are needed and should install additional noise controls to meet the level within 1 year of the in-service date. Texas Eastern should confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.