

127 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation

Docket No. CP08-476-000

ORDER ISSUING CERTIFICATE

(Issued May 7, 2009)

1. On September 18, 2008, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP08-476-000 an application under section 7(c) of the Natural Gas Act (NGA)¹ for a certificate of public convenience and necessity authorizing Transco's Mobile Bay South Expansion Project (project), an expansion of the capacity of Transco's existing Mobile Bay Lateral, which will enable Transco to provide 253,500 dekatherms per day of incremental southbound firm transportation service. We will authorize the Mobile Bay South Expansion Project, with appropriate conditions, as discussed below.

I. Background

2. Transco is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce. Transco's transmission system extends from its principal sources of supply in Texas, Louisiana, Mississippi and Alabama and the offshore Gulf of Mexico area, through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey, to its termini in the New York City metropolitan area.

3. Transco originally constructed the 123.4 mile, 30-inch diameter Mobile Bay Lateral² in 1987 pursuant to section 311 of the Natural Gas Policy Act (NGPA)³ to access gas produced in Mobile Bay and in the offshore Alabama area generally. The Mobile Bay lateral extends generally northward from the tailgate of the Mobil Oil Exploration and Production Southeast, Inc. gas treatment plant near Coden, Mobile

¹ 15 U.S.C. § 717, *et seq.* (2006).

² The lateral was originally named the Mobile Bay Pipeline.

³ 15 U.S.C. § 3301, *et seq.* (2006).

County, Alabama to an interconnection with Transco's mainline near Butler, Choctaw County, Alabama. The line was placed in service on April 8, 1988, with a maximum capacity of 461,962 Mcf per day. On October 20, 1992, the Commission granted Transco a certificate of public convenience and necessity under section 7 of the NGA to operate the pipeline as a jurisdictional facility and provide transportation service under Subpart G of Part 284 of the Commission's regulations.⁴

4. By orders issued on January 15, 1993,⁵ and September 15, 1993,⁶ the Commission authorized Transco and Florida Gas Transmission Company (Florida Gas) to expand the Mobile Bay Lateral's capacity to approximately 829,000 Mcf per day by adding 21,532 horsepower (hp) of compression at the existing Compressor Station 82 in Mobile County, Alabama.⁷

5. By orders issued on October 29, 1997, and January 30, 1998, the Commission⁸ authorized Transco to further expand its capacity on the Mobile Bay Lateral. This expansion project included the construction of Compressor Station 83 in Mobile County, Alabama, additional compression at Compressor Station 82, and construction of an approximately 72-mile offshore extension of the lateral and other minor facilities. In addition, Transco's capacity on the onshore portion of the Mobile Bay Lateral was increased to 784,426 Mcf per day as a result of the expansion project.

6. The maximum daily capacity of the onshore portion of the Mobile Bay Lateral currently stands at 1,093,042 Mcf, with 784,426 Mcf per day owned by Transco and 308,616 Mcf per day owned by Florida Gas. The offshore portion is fully owned by Transco and has a maximum capacity of 350,000 Mcf per day.

⁴ *Transcontinental Gas Pipeline Corp.*, 61 FERC ¶ 61,073 (1992); *reh'g denied*, 63 FERC ¶ 61,024 (1993).

⁵ *Transcontinental Gas Pipe Line Corp.*, 62 FERC ¶ 61,024 (1993).

⁶ *Transcontinental Gas Pipe Line Corp.*, 64 FERC ¶ 61,288 (1993).

⁷ The 829,000 Mcf per day of capacity made available by the expansion included 86,152 Mcf per day of capacity turnback by existing firm customers on the lateral.

⁸ *Transcontinental Pipe Line Corp.*, 81 FERC ¶ 61,104 (1997) and *Transcontinental Pipe Line Corp.*, 82 FERC ¶ 61,084 (1998). Florida Gas did not participate in this expansion project.

II. Proposal

A. Facilities

7. Transco proposes to construct and operate Compressor Station 85, a new 9,470 hp compressor station to be located at the interconnection of the Mobile Bay Lateral and Transco's main line in Choctaw County, Alabama. As proposed, the project will include the installation of two 4,735 hp gas-fired compressor units, along with supporting compressor station facilities, and approximately 2,400 feet of 30-inch diameter pipeline connecting the outlet of the station to the Mobile Bay Lateral.⁹ Transco states that construction of the project facilities will enable it to provide firm transportation service from Station 85 and interconnects with third-party pipelines at Station 85 southward to delivery points located on the Mobile Bay Lateral, including a delivery point to Gulfstream Natural Gas System, L.L.C., while preserving Transco's capability to provide its certificated level of northbound firm transportation service on the Mobile Bay Lateral.¹⁰

B. Rates

8. Transco states that it executed binding precedent agreements for 100 percent of the incremental firm transportation capacity to be made available by the project -- one with Florida Power Corporation, d/b/a Progress Energy Florida, Inc., and one with Southern Company Services, Inc., as agent for its affiliates Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company. Transco states that the precedent agreements provide for the shippers to pay the total maximum reservation rate and total maximum commodity rate under Transco's Rate Schedule FT for the Mobile Bay Lateral and all applicable charges, surcharges, and compressor fuel and line-loss make-up retention. Transco requests a predetermination that it may roll the costs of the project into its system-wide cost of service in its next general NGA section 4 rate proceeding.

⁹ Transco states that using the guidelines presented in a research study conducted by the Interstate Natural Gas Association of America, it has determined that currently-available waste heat recovery to power systems are not economically viable for this facility.

¹⁰ Transco's application does not propose any changes to the offshore portion of the Mobile Bay Lateral.

III. Interventions

9. Notice of Transco's application was published in the *Federal Register* on October 3, 2008 (73 Fed. Reg. 57,616). The parties listed in Appendix A filed timely, unopposed motions to intervene. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹¹ Numerous federal and state representatives, local producers, and other energy related companies filed comments in support of Transco's application.

10. National Fuel Gas Distribution Corporation, UGI Distribution Companies; BP Energy Company; Pivotal Utilities Holding, Inc., d/b/a Elkton Gas (in Maryland) and Elizabethtown Gas (in New Jersey); Atlanta Gas Light Company; Virginia Natural Gas Company; the Municipal Gas Authority of Georgia; and the Transco Municipal Group filed untimely motions to intervene. These parties have demonstrated an interest in this proceeding and granting their late interventions will not unduly delay or disrupt this proceeding or otherwise prejudice other parties. Therefore, for good cause shown, we are granting these late motions to intervene pursuant to Rule 214(d).¹²

11. The motion to intervene of Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (Con Edison and PGW) included a limited protest and request for conditions and clarification. The motion to intervene of Brooklyn Union Gas Company d/b/a National Grid (collectively the National Grid Gas Delivery Companies or National Grid) included comments and a request for clarification. The motion to intervene of Alabama Department of Conservation and Natural Resources included comments.

12. Transco filed an answer to the limited protest and request for conditions and clarification filed jointly by Con Edison and PGW, and to the comments and request for clarification filed by National Grid. Answers to protests are not allowed under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure.¹³ However, we will waive this rule to admit Transco's answer because this pleading has provided information that assisted us in our decision-making.

¹¹ 18 C.F.R. § 385.214 (2008).

¹² 18 C.F.R. § 385.214(d) (2008).

¹³ 18 C.F.R. § 385.213(a)(2) (2008).

IV. Discussion

13. Since the proposed facilities will be used to transport 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.

Certificate Policy Statement

14. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.¹⁴ The Certificate 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 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. 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.

15. 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 its 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 route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered.

16. 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. Transco will provide its proposed expansion service under its existing Part 284 rates. Since none of the project costs are included in Transco's currently-effective

¹⁴*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

rates, accepting Transco's proposal to charge these rates as initial rates for the project will not result in subsidization by existing customers. Further, as discussed below, we find that project revenues will exceed the projected cost of service and a presumption of rolled-in rate treatment is appropriate. Thus, Transco's existing shippers will not subsidize the Project.

17. Transco's proposal will have no adverse impact on its existing customers since the proposal will not result in any degradation of service to them. Further, we find no adverse impacts on existing pipelines in the market or their captive customers because the proposal is for new incremental service and is not intended to replace existing service on any other existing pipeline. Additionally, no pipeline company has protested Transco's application.

18. Transco proposes to construct the project and associated facilities on 40 acres of a 126.8-acre site near milepost 784.3 on the Transco mainline in Choctaw County, Alabama. Transco contends that the compressor station property was selected to minimize impacts to land use, nearby landowners, and the environment. Transco states that all clearing, grading, and land disturbance for the project will be limited to areas within Transco's Compressor Station 85 property line. Therefore, we find that there should be minimal adverse environmental effects.

19. We conclude that any potential adverse effects of the project are outweighed by the substantial benefits of the project. The project will expand the Mobile Bay Lateral's flexibility and utilization by creating bidirectional flow capability. The project customers will use this capacity to access additional gas supply and third-party storage services along the Mobile Bay Lateral, as well as expanding markets in southern Alabama and Florida, in order to serve their growing requirements for natural gas without impacting existing customers' services. We also conclude that there is substantial market demand for the project as demonstrated by the fact that Transco executed precedent agreements that provide for the long-term subscription of all of the incremental capacity to be made available by the project. Transco's existing customers will not subsidize the project and there will be no degradation of service to Transco's existing customers or any adverse effects on existing pipelines or their customers. Finally, adverse impacts on landowners and neighboring communities will be minimal. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Transco's proposals.

Rates

Cost of Service and Rates

20. Transco contends that the project qualifies for rolled-in rate treatment. Using the existing system-wide rates, Transco's Exhibit P reflects an estimated cost of service of \$8,039,295 and associated estimated revenues of \$8,414,451, thus projecting a revenue

benefit of \$375,156. Transco states that the estimated incremental rate for the proposed project is lower than Transco's currently effective maximum rate under Rate Schedule FT for Zone 4A transportation. Thus, it proposes rolled-in rate treatment for the project so that the existing customers will receive a net financial benefit from the relatively inexpensive expansion proposed herein.¹⁵

Request for Clarification

21. In their clarification requests, Con Edison and PGW and National Grid contend that Transco projects that revenues will exceed the incremental cost of service by \$375,156, a difference of only 4.7 percent. Con Edison and PGW and National Grid state that even a modest increase in Transco's estimated cost of service would void the premise supporting Transco's rolled-in rate request, making it premature for the Commission to grant Transco's request for permission to roll in the costs of the project in its next general NGA section 4 rate case. Consistent with Commission precedent,¹⁶ Con Edison and PGW request that the Commission clarify that such a pre-determination will only be applicable when Transco files its next general rate case and shows that rolled-in rates do not result in subsidization of the project by other shippers. National Grid requests that the Commission clarify that Transco will have the burden of proof under NGA section 4 to justify and fully support its request to roll in the costs of the project in any future general rate proceeding.

22. Transco contends that when the Commission makes a pre-determination in a certificate proceeding regarding whether rolled-in rate treatment is appropriate, it bases its decision on the facts, estimates, and assumptions at the time the certificate is issued.¹⁷ Transco maintains that the Commission cannot foresee whether circumstances will change to such an extent that a project is no longer eligible for rolled-in rate treatment by the time the pipeline files its next rate case.¹⁸ Transco asserts that speculation as to

¹⁵ Transco calculates the incremental rate for the project to be \$0.08689 per Dth, as compared to the currently effective Zone 4A rate of \$0.09094 per Dth. The cost of service is based on an estimated facilities cost of \$36,903,935, plus estimates for overhead and maintenance expenses, a pre-tax return of 15.34 per-cent (the pre-tax return underlying the design of Transco's approved settlement rates in Docket No. RP01-245-000, *et. al.*) and a depreciation rate included in Transco's approved settlement in Docket No. RP06-569, *et. al.*

¹⁶ *See, e.g., Iroquois Gas Transmission System, L.P. (Iroquois)*, 122 FERC ¶ 61,242, at P 14 (2008).

¹⁷ *El Paso Natural Gas Co.*, 113 FERC ¶ 61,183, at 61,730 (2005).

¹⁸ *Id.*

whether it may overrun the estimated cost of the project does not constitute a valid basis for the Commission to withhold application of its policy to the project. Specifically, Transco avers that Exhibit P demonstrates that the firm transportation revenues will exceed expenses for the first year. Transco asserts this constitutes the requisite demonstration that existing firm transportation customers will not subsidize the project. Further, Transco states that consistent with Commission policy, the Commission should determine that Transco be permitted to roll-in the costs of the project in Transco's first general rate case following the in-service date of the project. Transco contends that this would be the proper forum for any party to evaluate the final cost of the project and identify any change in material circumstances that may warrant a reexamination of rolled-in rate treatment.

Commission Determination

23. Based on the facts, estimates, and assumptions before the Commission at this time, it appears that the revenues which would be generated by providing service at the proposed recourse rates would exceed the project's associated cost of service. Absent a change in circumstances, rolled-in rate treatment for these costs would benefit existing customers by reducing their rates.¹⁹ Therefore, we will grant Transco's request for a pre-determination supporting rolled-in rate treatment for the costs of the Project in its next general NGA section 4 rate proceeding, absent a significant change in circumstances. Our holding here is consistent with Commission precedent.

24. If cost overruns occur, as Con Edison and PGW are concerned might happen due to the narrow difference between project revenues and the estimated incremental cost of service, such an event may constitute a significant change in circumstances warranting a reconsideration of the roll-in pre-determination.²⁰ To ensure that all parties have full knowledge of the costs and revenues attributable to the project, we will require Transco to account for the construction and operating costs and revenues separately in accordance with section 154.309 of the Commission's regulations.²¹ With such information, the parties and the Commission can evaluate the costs of the project and will be able to identify any change in material circumstances that may warrant a re-examination of rolled-in rate treatment in its next section 4 rate proceeding.

¹⁹ Id.

²⁰ *Iroquois*, 122 FERC ¶ 61,183, at P 15 (2008). See also, *Northern Border Pipeline Co.*, 90 FERC ¶ 61,263, at 61,877 (2000).

²¹ 18 C.F.R. § 154.309 (2008).

Fuel Costs

25. Con Edison and PGW contend that the proposed north to south movement of gas in Transco's Zone 4A at rolled-in rates would cause Transco's system customers to subsidize fuel requirements properly attributable to the project's customers. Con Edison and PGW contend that Transco's rate design for the allocation of fuel costs assumes that a movement commencing and terminating in Zone 4A is accomplished via backhaul or displacement. Con Edison and PGW state that this will not be the case once the project facilities are constructed. Con Edison and PGW request that the Commission condition any approval of Transco's application to require Transco to allocate fuel to the project transportation in the same manner that it allocates fuel to other forward-haul transmission services.

26. Transco asserts that Con Edison and PGW misunderstand Transco's proposal with regard to charging fuel for the firm transportation service rendered under the project. Transco proposes that the initial rates applicable to the firm transportation service will be the prevailing rates under Transco's Rate Schedule FT for transportation within Zone 4A in effect at the time service commences, which will include the applicable fuel-retention percentage. Transco states that since the firm transportation service under the project will be provided on a forward-haul basis entirely within Transco's Zone 4A, the applicable fuel factor will be the Zone 4A to Zone 4A fuel percentage set forth on Sheet No. 44 of Transco's Tariff, as that fuel-retention percentage may be revised from time to time.²² Transco clarifies that it will include such firm transportation service in future calculations of Transco's fuel retention percentages like any other forward-haul, firm transportation service rendered by Transco.

Commission Determination

27. Transco's project involves the installation of 9,470 hp of additional gas-fired compression. Such an increase in compression may increase fuel costs for existing shippers who transport within Zone 4A.²³ Transco's application does not provide any information as to the possible impact the new compression will have on fuel costs or fuel retention levels to existing shippers. Therefore, we will require Transco to separately maintain its accounts for the fuel used by the project and report the results in its first

²² The current fuel retention percentage for forward-haul transportation within Zone 4A is 0.42 percent. Transco states that with the in-service date of the Project and the ensuing north to south forward-haul of gas in Zone 4A, all transportation in Zone 4A will be assessed the Zone 4A fuel retention factor and Sheet No. 44 will be revised accordingly.

²³ The Zone 4A fuel retention factor is currently 0.42 percent.

section 4 fuel tracker rate filing after the expansion is in service demonstrating that existing shippers will not be adversely affected by the inclusion of the project's compression costs in its Zone 4A Fuel rate.²⁴

Environmental Analysis

28. October 21, 2008, we issued a Notice Of Intent To Prepare an Environmental Assessment (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. The NOI comment period ended on November 20, 2008.

29. We received comments on the NOI from the State of Alabama, Department of Conservation and Natural Resources, Wildlife and Freshwater Fisheries Division (ADCNR); the Alabama Department of Environmental Management, Water Division (ADEM); and Mr. Johnny Morgan.

30. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environment assessment (EA) which was placed in the public record on March 16, 2009. The analysis in the EA included the Project's purpose and need, geology, soils, water resources, wetlands, vegetation, fish and wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality and noise, and alternatives. The EA also addressed all substantive issues raised in the scoping letters.

31. In its comment letter on the NOI, the ADEM advised that the Alabama Best Management Practices as provided in the *Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas* (AL Handbook) should be implemented prior to, during, and after construction of the Project. To reduce the potential for erosion, Transco would use its Construction Best Management Practices Plan (CBMP Plan) which incorporates our staff's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Water body Construction and Mitigation Procedures during construction and restoration of the Project. Transco's CBMP Plan also includes measures to comply with the ADEM's regulations and the AL Handbook. We concur with the finding in the EA that Transco's use of its CBMP Plan would be acceptable for the project.

²⁴ Con Edison and PGW also contend that Transco's application does not contain an estimate of the electric power costs for the Project. Since Transco is not proposing to install any electric-powered compression, there are no incremental electric power cost issues in connection with Transco's proposal.

32. The ADEM and the ADCNR contend that Transco should comply with the regulations under the section 404 of the Clean Water Act and other applicable permits issued by the U.S. Army Corps of Engineers or the ADEM. The ADEM also recommended contacting the U.S. Fish and Wildlife Service (FWS) and the ADCNR to address potential impacts to endangered and threatened species. Transco received a Nationwide Permit 12²⁵ authorization for the project on October 14, 2008.

33. The EA indicates that the threatened gopher tortoise, gulf sturgeon, inflated heel splitter mussel and the endangered wood stork are known to occur or could occur within the region surrounding the proposed project facilities. However, the EA also states that the gulf sturgeon and the heel splitter mussel require significant aquatic habitat found in perennial water bodies, which are not impacted by the proposed project facilities. Thus, construction and operation of the proposed project would not affect these two species. Additionally, since the wood stork generally forages in areas containing standing water, and the proposed project facilities would not impact any such areas, the EA concludes that construction and operation of the proposed project would not affect this species.

34. Transco surveyors observed potentially suitable gopher tortoise habitat. However, no gopher tortoises or their burrows were located during surveys. The EA discusses Transco's proposed measures to confirm that gopher tortoises are not in the project area during construction and to train its workers in how to avoid impact on this species. The EA concludes that construction and operation of the proposed project is not likely to adversely affect this species. On March 24, 2009, the FWS concurred with the EA's determination.

35. The ADCNR suggested that directional drilling should be utilized at stream crossings where habitat known to support sensitive species exists. The EA discusses the proposed stream crossings and concludes that none of the water bodies crossed by the proposed pipeline are classified as sensitive, contain habitat for sensitive species, or are known to contain any contaminants. Transco would cross three water bodies using open-cut construction techniques. Based on Transco's proposed water body crossing techniques, the relatively small size of the water bodies and the implementation of minimization and mitigation measures as described in Transco's CBMP Plan and Spill Prevention and Control (SPCC) Plan, the EA concludes that construction and operation of the proposed project would not significantly impact surface waters. We agree.

36. The ADCNR's comment letter also suggested that topsoil from both wetland and upland areas be segregated and replaced following construction. Transco's data response

²⁵ A Nationwide Permit 12, issued by the U.S. Army Corps of Engineers, details the activities required for the construction, maintenance, and repair of utility lines (including gas pipelines) and associated facilities in waters of the United States.

filed on February 3, 2009, indicates that topsoil segregation would be performed in wetlands. Transco's CBMP Plan and our staff's Plan state that topsoil segregation would only occur in non-agricultural uplands when requested by the landowner or land managing agency. Since the approximately 130-acre parcel on which the project would occur is owned in fee by Transco, Transco does not propose to segregate topsoil in uplands. As stated in the EA, the measures proposed in Transco's CBMP Plan, including those measures addressing topsoil segregation, are acceptable.

37. To reestablish vegetation and to control erosion along the right-of-way following construction, the ADCNR recommended seeding with either brown top millet in summer or winter wheat during the fall and winter. The EA describes Transco's proposal for revegetating disturbed areas. Transco has committed to consult with the Natural Resource Conservation Service (NRCS) to obtain its recommendations for seed mixtures. The NRCS's seeding recommendations are consistent with those from the local soil conservation authority or land management agency. The ADCNR also states the use of herbicides to control vegetation along the right-of-way is preferable to mowing. However, if mowing is conducted, the ADCNR recommends the impacts to nesting birds be minimized by not mowing during the period from March 15 to August 1. In a February 3, 2009 data response, Transco agreed to this timing restriction for mowing.

38. Mr. Morgan submitted a comment about his lake camp which is located more than one-quarter mile southwest of the project. Mr. Morgan is concerned that the project would impact air quality, noise, water resources, fisheries, and wetlands. As stated in the EA, the lake camp is located approximately 3,000 feet west-southwest of the proposed location of the compressor building and approximately 1,650 feet west of Transco's western property boundary. For purposes of the analysis in the EA, the camp was treated as a residence and a potential Noise Sensitive Area (NSA). The acoustic analysis report for the lake camp concluded that the noise attributable to Transco's proposed Compressor Station 85 at the lake camp is expected to be significantly lower than 55 decibels on the A-weighted scale at the day-night sound level (55 dBA (L_{dn})), as required by environmental condition 10.

39. To ensure noise levels during operation are at acceptable levels, environmental condition 10 also requires Transco to conduct a noise survey of the new Compressor Station 85 at full load. If the noise exceeds an L_{dn} of 55 dBA at Mr. Morgan's camp or any other nearby NSA, Transco must file a report on what additional noise controls it will install to meet that level within one year of the in-service date.

40. The EA describes the results of our air quality screening analysis and concludes that construction and operation of Transco's project would not have a significant impact on the air quality in the project area. The EA also addresses the other concerns raised by Mr. Morgan and concludes that with the implementation of the mitigation measures described in Transco's CBMP and SPCC Plans, the project would have no impact or minimal impact on these resources.

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

42. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁶

43. The Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Transco to construct and operate the Mobile Bay South Expansion Project, as described more fully in the order and in the application.

(B) The certificate issued herein is conditioned on Transco's compliance with all of the applicable regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20.

(C) Prior to commencing construction, Transco must execute service agreements for the levels and terms of service reflected in the precedent agreements submitted in support of its proposal.

(D) Transco's facilities shall be constructed and made available for service within one year of the date of the order in this proceeding, in accordance with section 157.20(b) of the Commission's regulations.

²⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Transco's request for a predetermination favoring rolled in rate treatment for the costs of the project in its next general section 4 proceeding is granted, absent a significant change in circumstances.

(F) Transco is required to separately maintain its accounts for the project costs, including fuel, and revenues consistent with section 154.309 of the Commission's regulations.

(G) The certificate issued herein is conditioned on Transco's compliance with the environmental conditions set forth in Appendix B to this order.

(H) Transco 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 Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) The late filed motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Motions to Intervene in Docket No. CP08-476-000

- Florida Gas Transmission Company, LLC
- Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively, “SCS”)
- North Carolina Utilities Commission
- Piedmont Natural Gas Company, Inc.
- Atmos Energy Corporation
- Chevron USA Inc.
- Exxon Mobile Corporation
- Hess Corporation
- Washington Gas Light Company
- PSEG Energy Resources & Trade LLC
- Public Service Company of North Carolina, Inc.
- South Carolina Electric & Gas Company
- PECO Energy Company
- Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works
- NJR Energy Services Company
- New Jersey Natural Gas Company
- The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, (collectively “the National Grid Gas Delivery Companies” or “National Grid”)
- Florida Power Corporation d/b/a Progress Energy Florida, Inc.
- State of Alabama Department of Conservation and Natural Resources
- Wildlife and Water Fisheries Division
- Municipal Gas Authority of Georgia
- Alabama Department of Environmental Management

Untimely Motions to Intervene in Docket No. CP08-476-000

- National Fuel Gas Distribution Corporation
- UG Distribution Companies
- BP Energy Company and BP
- Elizabethtown Gas

- Atlanta Gas Light Company
- Virginia Natural Gas Company
- Elkton Gas
- The Municipal Gas Authority of Georgia
- The Transco Municipal Group

Appendix B

Environmental Conditions for the Mobile Bay South Expansion Project

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

1. Transco 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. Transco 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 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 and operation.

3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel would be informed of the environmental inspector'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. Transco 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 Transco's Construction Best Management Practices 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.

5. Within 60 days of the acceptance of this certificate and before construction begins, Transco shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:

- a. how Transco 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. the training and instructions Transco will give to all personnel involved with construction; and
- c. provide a Gantt or PERT chart (or similar project scheduling diagram) and dates for the start and completion of the project.

6. Transco shall employ at least one environmental inspector for the project. The environmental inspector(s) 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. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
- c. 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

- d. responsible for maintaining status reports.

7. **Beginning with the filing of its initial Implementation Plan**, Transco shall file updated status reports with the Secretary on a **monthly basis** until all construction and restoration activities are complete. On request, these status reports should also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Transco's efforts to obtain the necessary federal authorizations;
- b. the construction status of the project work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
- c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. 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 Transco from other federal, state or local permitting agencies concerning instances of noncompliance, and Transco's response.

8. Transco must receive written authorization from the Director of the OEP **before commencing service from the project**. Such authorization would only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

9. **Within 30 days of placing the certificated facilities in service**, Transco 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 would be consistent with all applicable conditions; and
- b. identifying which of the certificate conditions Transco has complied with or would 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. Transco shall file noise surveys with the Secretary **no later than 60 days** after placing the Compressor Station 85 in service. If the noise attributable to the operation of the new Compressor Station 85 at full load exceeds an L_{dn} of 55 dBA at any nearby (NSAs or noise-sensitive areas), Transco shall file a report on what changes are needed and shall install additional noise controls to meet that level **within one year** of the in-service date. Transco shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.