

131 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. CP09-444-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued May 14, 2010)

1. On July 17, 2009, Tennessee Gas Pipeline Company (Tennessee) filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to construct, install, modify, replace, and operate certain pipeline and compression facilities that will become part of Tennessee's existing 300 Line System located in Pennsylvania and New Jersey. Tennessee also proposed to abandon certain compression facilities. The Commission will issue the requested certificate, subject to conditions, and approve the proposed abandonments.

I. Background and Proposal

2. Tennessee is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce. Tennessee's transmission system extends from its principal sources of supply in Texas, Louisiana, and the Gulf of Mexico area, through the states of Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

3. Tennessee proposes to replace certain compression facilities in order to increase overall system reliability (the Replacement Component) and, at the same time, to increase the pipeline capacity of its existing 300 Line System by an incremental 350 million cubic feet per day (MMcf/d) to meet an expressed market need (the Market Component) (jointly, the 300 Line Project). In addition, Tennessee requests authority to abandon certain compression facilities related to the Replacement Component.

4. Tennessee states that the Replacement Component involves replacing existing compressor facilities with new, larger compressor facilities providing modern combustion

and emission reduction technology and the retirement of certain older facilities at Stations 313, 315, 321, and 325, as follows:

- Station 313 – replace an existing 1,320 hp unit with a 6,500 horsepower (hp) unit,¹
- Station 315 – replace an existing 9,300 hp unit with a 16,000 hp unit,²
- Station 321 – replace three existing 3,333 hp drives with three 4,700 hp drives,³
and
- Station 325 – replace two existing units totalling 9,442 hp with two new 10,310 hp units.⁴

5. Tennessee states that the proposed replacement of the existing compression facilities is intended to increase overall system integrity and reliability, not to increase the firm transportation capacity available on the 300 Line. Except for 4,100 hp at Station 321, all horsepower increases above the existing levels will be used to support the Market Component of the 300 Line Project.

6. In addition to the 23,058 hp added at Stations 313, 315, and 325 as described above, the Market Component involves the construction of eight pipeline loop segments totaling 127.4 miles of 30-inch diameter pipe⁵ and two new 16,000 hp compressor

¹ The additional 5,180 hp will be allocated to the Market Component.

² The additional 6,700 hp will be allocated to the Market Component.

³ Tennessee states that the incidental increase of 4,100 hp will not be allocated to the Market Component and is not needed to achieve the 350 MMcf/d of additional firm transportation capacity to be provided by that part of the project. Rather, Tennessee asserts that the net increase in horsepower is the result of replacing the existing gas turbine engines, which are obsolete and no longer in production, with currently available drives, which have been rated at a higher horsepower.

⁴ The additional 11,178 hp will be allocated to the Market Component.

⁵ In Pennsylvania, the proposed looping consists of 13.0 miles in Potter County, 20.9 miles in Tioga County, 25.3 miles in Bradford County, 19.5 miles in Susquehanna County, 17.8 miles in Wayne County, and 14.9 miles in Pike County. In New Jersey, the proposed looping consists of 10.0 miles in Sussex County, and 6.0 miles in Passaic County.

stations, Station 303 and Station 310.⁶ The Market Component also includes the upgrade/restaging of compressor units at three other existing compressor stations.⁷

7. Tennessee is also seeking authority to abandon the compressor facilities that will be replaced as part of the Replacement Component. These facilities include:

- Station 313 – one compressor and drive (1,320 hp);
- Station 315 – one compressor and drive (9,300 hp) and ancillary facilities;
- Station 317 – one compressor;
- Station 321 – three drives (3,333 hp each); and
- Station 325 – two compressors and drives (totaling 9,442 hp) and ancillary facilities.⁸

8. The total cost of the 300 Line Project is estimated to be \$643,130,885, of which Tennessee has allocated \$584,965,393 to the Market Component and \$49,165,492 to the Replacement Component. Tennessee proposes to recover the costs associated with the Market Component through an incremental rate charged to shippers using the resulting capacity. Tennessee proposes to roll the costs related to the Replacement Component into its system rates in its next section 4 rate proceeding.

⁶ Tennessee considered waste heat recovery in its design of each of the new 16,000 hp units at two new and one existing compressor stations, Stations 303, 310, and 315, respectively. However, based upon Tennessee's projected use of these stations, primarily for peak service when Tennessee's system capacity exceeds 90 percent throughput volumes, the annual operating time for each unit would be 3,625 hours or less, which is substantially below the 5,250 hour threshold as recommended by the INGAA white paper. As a result, Tennessee did not include waste heat as part of the project.

⁷ The upgrade/restaging will be at Station 319 – restage two centrifugal compressors; Station 321 – restage three centrifugal compressors; Station 323 – install filter separator; and Station 325.

⁸ Although it appears that Tennessee is seeking abandonment authority for the two drives, they also state that the drives to be removed from Station 325 will be relocated to Station 321 as part of the Replacement Component. Abandonment authority is not appropriate for such a relocation of facilities which will nevertheless remain in service.

9. Tennessee states that it entered into a precedent agreement with EQT Energy LLC (EQT)⁹ on July 13, 2008, to provide 300,000 decatherms (Dth) per day of firm transportation, which agreement was amended on June 12, 2009, to include up to an additional 50,000 Dth per day.¹⁰ Thus, all the capacity of the proposed Market Component expansion is currently subscribed under precedent agreement by EQT.

10. Tennessee states that after each of the agreements with EQT was executed, Tennessee held an open season offering transportation service at rates, terms, and conditions of service equivalent to those included in the previously agreed-to transactions with EQT. Tennessee states that no parties, other than EQT, submitted a bid in either the initial open season or revised open season. Tennessee also states that in both the initial and revised open seasons, it provided potential shippers with the option to select either cost-of-service recourse rates or negotiated rates. Tennessee states that EQT selected the negotiated rate option in both the initial and revised open seasons. Tennessee plans to commence service through the proposed facilities on November 1, 2011.

II. Interventions

11. Notice of Tennessee's application was published in the *Federal Register* on August 6, 2009 (74 Fed. Reg. 39,309). Eleven timely unopposed motions to intervene were filed.¹¹ Timely, unopposed motions to intervene are granted by operation of

⁹ EQT is a natural gas marketing company involved with the purchase and sale of natural gas in the Appalachian Basin and will use this capacity to increase its access to diversified natural gas supplies and delivery points.

¹⁰ Of the 350,000 Dth per day of additional firm transportation capacity, 300,000 Dth per day will be available for firm transportation along Tennessee's entire 300 Line for deliveries to Mahwah and River Vale, New Jersey, and White Plains, New York. The remaining 50,000 Dth per day will be available on the 300 Line from Station 319 for deliveries to Mahwah, New Jersey.

¹¹ The eleven motions were filed by ProLiance Energy, LLC; Atmos Energy Marketing LLC; Atmos Energy Corp.; East Ohio Gas Co., d/b/a Dominion East Ohio and Peoples Natural Gas Co., d/b/a Dominion Peoples; National Fuel Gas Distribution Corp.; PSEG Energy Resources & Trade LLC; New England Local Distribution Companies; Orange and Rockland Utilities, Inc. and Consolidated Edison Co. of New York, Inc.; New York State Electric & Gas Corp.; National Grid Gas Delivery Companies; and New Jersey Board of Public Utilities. The New England LDCs include: Bay State Gas
(continued...)

Rule 214 of the Commission's Rules of Practice and Procedure.¹² EQT and Millennium Pipeline Company, LLC filed motions to intervene out-of-time, and William A. Eberhardt filed comments and a request to intervene out-of-time. All demonstrated an interest in this proceeding and their late interventions will not delay or otherwise prejudice the proceeding. Therefore, we will grant these motions.

12. Piedmont Natural Gas Company, Inc. (Piedmont) filed a limited protest to Tennessee's application, contending that Tennessee failed to provide substantive data to support the claim that the Replacement Component will provide increased system integrity and reliability for its existing customers. Piedmont asserts that Tennessee's request for rolled-in rate treatment for the Replacement Component facilities should be deferred until Tennessee's next general section 4 rate proceeding. The Tennessee Customer Group filed comments requesting the Commission to require Tennessee to provide the open season notices for the proposed project to allow customers to determine whether the notices contained most favored nation clauses or other non-conforming terms that may be unduly discriminatory and unduly preferential.¹³ We will address the protest and comments below.

13. On August 31, 2009, Tennessee filed an answer to protests and comments. The Commission's regulations do not permit answers to protests; however, the Commission may waive its procedural rules to accept such answers.¹⁴ We find that Tennessee's

Co.; The Berkshire Gas Co.; Connecticut Natural Gas Corp.; Fitchburg Gas and Electric Light Co.; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Co.; The Southern Connecticut Gas Co.; Westfield Gas & Electric Department; and Yankee Gas Services Co.

¹² 18 C.F.R. § 385.214(d) (2009).

¹³ The Tennessee Customer Group includes: CenterPoint Energy Mississippi Gas; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

¹⁴ 18 C.F.R. § 385.213(a).

answer provides information that will assist the Commission in its decision-making; therefore, we will accept Tennessee's answer.

III. Discussion

14. Since Tennessee's proposed facilities will be used to transport natural gas in interstate commerce, they are subject to the requirements of sections 7(b) and (c) of the NGA, and the Commission's jurisdiction.¹⁵

A. Application of the Certificate Policy Statement

15. On September 15, 1999, the Commission issued a policy statement which provides guidance as to how the Commission will evaluate proposals for certificating new construction.¹⁶ 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. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to support the project financially without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse 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, the Commission will evaluate the project by

¹⁵ 15 U.S.C. § 717f (2000).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying policy*, 90 FERC ¶ 61,128 (2000), *order clarifying policy*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*).

balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

17. With respect to the Market Component of the proposed project, Tennessee proposes to recover the related costs through an incremental rate charged for transportation service utilizing the expansion capacity, a rate which is higher than the existing system-wide rate. Use of an incremental rate, as discussed and approved below, ensures that existing customers will not subsidize the expansion. Thus, we find Tennessee's existing shippers will not subsidize the Market Component.

18. The Market Component facilities will make available the additional firm capacity needed to provide 350,000 Dth/d of service to EQT without adversely affect existing customers, since the service of existing customers will not be degraded by the construction and operation of the new facilities. In addition, we find that there will be no adverse impact on existing pipelines in the region or their captive customers because the proposal is for service to new natural gas customers and will not replace loads currently being transported for the captive customers of other existing pipelines; no existing pipelines or their customers have protested the proposal. Moreover, the Market Component will help alleviate pipeline constraints in the region by increasing pipeline capacity to the high-demand markets in the northeast, as well as providing access to diversified natural gas supplies from the Gulf Coast, Appalachian, Rockies, and Marcellus Shale supply areas.

19. Regarding the Replacement Component of the project, we find, as discussed below, that it will increase system reliability and safety by replacing older compressor facilities with new compressor facilities which Tennessee avows will require less downtime for maintenance. The *Certificate Policy Statement* provides that existing customers should pay for the costs of projects designed to improve their service, such as projects to replace existing capacity or improve reliability. Under the *Certificate Policy Statement*, increasing the rates of existing customers to pay for these types of improvements does not constitute a subsidy, and the cost of such projects are permitted to be rolled into system rates.¹⁷ Thus, the Replacement Component, too, satisfies the threshold requirement of the *Certificate Policy Statement*.

¹⁷ *Certificate Policy Statement*, 88 FERC ¶ 61,227 at 61,747, n.12 (1999).

20. Regarding impacts on landowners and communities along the route of the project, we find that to the extent practical, Tennessee has proposed to locate the pipeline looping segments within or parallel to existing rights-of-way. In addition, all the construction, installation, and modifications activities at the existing compressor stations will take place within existing Tennessee property boundaries; the two new compressor stations will be constructed on two parcels of land in close proximity to the existing 300 Line. Tennessee participated in the pre-filing process and states that it is working diligently to address landowner concerns and questions, and to negotiate mutually agreeable easement agreements. We find that Tennessee has taken steps to minimize any adverse impacts on landowners and surrounding communities. A number of landowners filed comments objecting to or concerning the location of easements on their properties, Tennessee's treatment of landowners and the potential use of eminent domain. These comments are addressed in the Environmental Assessment for 300 Line Project (EA) and in the Environmental section, below.

21. Based on the benefits Tennessee's proposal will provide to the project shipper, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities along the route, we find that Tennessee's proposed 300 Line Project is consistent with the *Certificate Policy Statement* and required by the public convenience and necessity, as conditioned in this order.

22. We also find that Tennessee's proposal to abandon certain facilities that are being replaced or will no longer be required after the proposed project is placed in service is permitted by the public convenience and necessity.

B. Rates

1. Market Component Rates

23. The total cost of Line 300 Project is estimated to be \$634,130,855. Tennessee has allocated \$584,965,393 of the total to the Market Component and \$49,165,492 to the Replacement Component. Tennessee allocated the costs associated with the installation and modification of compression facilities at Stations 313, 315, and 325 between the Market Component and the Replacement Component based on the percentage of new/replacement horsepower at those stations attributable to each component.

24. For expansion service utilizing the capacity created by the Market Component, Tennessee proposes the following incremental recourse rates under Rate Schedule FT-A: (i) a monthly reservation rate of \$26.94 per Dth (equivalent to a daily reservation rate of \$0.89 per Dth);¹⁸ (ii) a daily commodity rate of \$0.00 per Dth; (iii) applicable demand and commodity surcharges; and (iv) applicable fuel and lost-and-unaccounted-for charges.¹⁹ The proposed incremental rate is based on a cost of service of \$113,148,000 and billing determinates of 350,000 Dth per day utilizing a 100 percent load factor. The \$113,148,000 annual cost of service reflects an estimated plant cost of \$584,965,393; operation and maintenance expense of \$7,673,000; depreciation expense of \$14,624,000; income tax of \$22,227,000; other taxes of \$1,931,000; and return of \$66,693,000. The cost of service was calculated utilizing an 11.5 percent rate of return, as approved in Tennessee last section 4 general rate case²⁰ and a straight-line depreciation rate of 2.5 percent, based on an estimated useful life of 40 years for the Market Component facilities.

2. Reporting for Incremental Rates

25. To assure that costs are properly allocated between Tennessee's existing shippers and the incremental Market Component services approved in this proceeding, the Commission will require Tennessee to keep separate books and accounting of costs attributable to the incremental services. Further, the books should be maintained with applicable cross-reference as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.²¹ Such measures enable the Commission to

¹⁸ The existing system monthly reservation rates for service under Tennessee's Rate Schedule FT-A from Zones O/L and 4 to Zone 5 are \$14.09 per Dth and \$3.38 per Dth, respectively. These are both substantially lower than the proposed \$26.94 per Dth incremental rate.

¹⁹ Tennessee projects an annual average fuel savings resulting from the 300 Line Project of -0.07 percent. See Tennessee's October 14, 2009 Data Response to question No. 2.

²⁰ *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996).

²¹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. and Regs. ¶ 31,267, at P 23 (2008).

protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service.²²

3. Negotiated Rates

26. Tennessee proposes negotiated rates for service to EQT. In certificate proceedings, the Commission establishes initial recourse rates, but does not make determinations regarding specific negotiated rates for proposed services.²³ In order to comply with the Alternative Rate Policy Statement,²⁴ and the Commission's decision in *NorAm Gas Transmission Company (NorAm)*,²⁵ the Commission directs Tennessee to file the Firm Transportation Agreement and the Negotiated Rate Agreement or a tariff sheet describing the Firm Transportation Agreement and the Negotiated Rate Agreement. If the negotiated rate agreement contains material deviations from the pipeline's form of service agreement, the pipeline must file and clearly delineate the differences between the negotiated rate agreement and its form of service agreement in redline and strikeout. If the negotiated rate agreement does not contain any material deviations from the form of service agreement, the pipeline may elect to file a tariff sheet reflecting the terms of the agreement together with a statement that the agreement conforms in all material respects with its form of service agreement.

27. The tariff sheets must state for each shipper paying a negotiated rate the following information: (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; (6) any formula upon

²² See 18 C.F.R. § 154.309 (2009).

²³ *CenterPoint Energy—Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004).

²⁴ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F. 3d (D.C. Cir. 1998); and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

²⁵ 77 FERC ¶ 61,011 (1996) (*NorAm*).

which the negotiated rate is designed; and (7) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of service agreements in its tariff. The Commission directs Tennessee to file either its Firm Transportation Agreement and Negotiated Rate Agreements or a tariff sheet fully describing the transactions no sooner than 60 days and no later than 30 days before service commences. Further, Tennessee is required to abide by the terms and reporting requirements of the Alternative Rate Policy statement as it may be modified from time to time.

28. Tennessee must also disclose all considerations linked to the agreements. In addition, Tennessee is required to maintain separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates for the project in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceedings. When Tennessee files negotiated rate tariff sheets under section 4 of the NGA, interested parties may protest if they believe the rates are discriminatory.

4. Rolled-In Rate Treatment for the Replacement Component

29. As indicated above, Tennessee proposes rolled-in rate treatment for the Replacement Component facilities, contending that the proposal will benefit all shippers by replacing four existing compressor stations with new, more efficient compressors, thereby increasing system integrity. Tennessee further argues that if it decided to pursue the Replacement Component on a stand-alone basis, the estimated costs of the Replacement Component facilities to its general system shippers would have been approximately \$73 million, instead of the proposed \$49.2 million; thus, Tennessee contends that its general system shippers will benefit from the lower costs of combining the Replacement Component with the Market Component.

30. Piedmont argues that Tennessee has failed to provide substantive data to support its claim that the Replacement Component will provide increased system integrity and reliability for existing customers. Piedmont contends that Tennessee's request for approval of rolled-in rate treatment is premature and requests that any decision concerning rate treatment for the Replacement Component be deferred until Tennessee's next general section 4 rate proceeding. Piedmont argues that system customers will have the opportunity in a rate proceeding to request all necessary data required to evaluate the requested rate treatment and provide informed input to the Commission on Tennessee's proposal.

31. Tennessee asserts in its answer that a predetermination of the appropriateness of rolled-in rate treatment for the Replacement Component costs is not premature and that the proposed rate treatment is consistent with the *Certificate Policy Statement*. Tennessee contends that because it is seeking authority to replace four existing

compressor facilities with new, larger, more efficient compressor facilities, the Replacement Component will increase system integrity and reliability benefiting all customers. Tennessee further asserts that it could have elected to replace the compressor facilities under either section 2.55 of the Commission's regulations²⁶ or under its blanket certificate authority,²⁷ and is thereby entitled to rolled-in rate treatment for the Replacement Component facilities.

32. Tennessee states that the compressors it proposes to abandon are older and require more maintenance downtime; thus, their replacement with newer units will result in less downtime for maintenance, reduce the run time of all compressor equipment on days of low flow, and should reduce fuel consumption, which will reduce the volume of gas transported for internal consumption, making the system more reliable for shippers. We find this assertion to be reasonable, and will thus approve Tennessee's request for a predetermination that the costs of the proposed Replacement Component facilities may be rolled into Tennessee's system rates in its next section 4 rate case.

33. However, this finding is based on the factual representations made by Tennessee in this proceeding. When Tennessee files under section 4 to recover its costs, if Piedmont or any party believes that such representations have not proven to be true, or that the costs associated with the Replacement Component have exceeded the benefits provided, they may raise such issues at that time.

C. Other Issues

1. Non-Conforming Provision in the Precedent and Transportation Agreements

34. The executed precedent agreement between Tennessee and EQT contains certain provisions relating to EQT's negotiated rate which deviate from the *pro forma* Rate Schedule FT-A transportation service agreement contained in Tennessee's tariff. Tennessee requests that the Commission preliminarily approve that none of the deviating provisions are unduly discriminatory. The provisions in question:

²⁶ 18 C.F.R. § 2.55 (2009).

²⁷ *Tennessee Gas Pipeline Co.*, 39 FERC ¶ 61,337 (1987).

- (1) give EQT a one-time right to extend the 15-year primary term of its agreement at an agreed upon rate;
- (2) specify how cost overruns or under-runs associated with construction of the Market Component will be shared between Tennessee and EQT; and
- (3) specifies that if Tennessee decides, in its sole discretion, to expand the project facilities that are located between Stations 313 and 325 to enable firm transportation service from the Marcellus Shale supply area to EQT's three primary delivery points, within four years of the in-service date of this project, EQT's negotiated rate may be subject to adjustment.

35. These contractual rights were negotiated between Tennessee and EQT in recognition of EQT's position as an Anchor shipper on the Market Component.²⁸ The Commission finds that although these provisions might be construed to constitute a material deviation from Tennessee's *pro forma* Service Agreement, they do not appear to be unduly discriminatory against other shippers.

36. The precedent agreement also contemplates the execution of a transportation agreement substantially similar to the one attached as Exhibits A, B, and C to the precedent agreement included in Tennessee's application.²⁹ Tennessee states that there are certain differences between the transportation agreement it will enter into with EQT and the *pro forma* FT-A gas transportation agreement set forth in Tennessee's tariff. Tennessee requests that the Commission preliminarily approve the provisions in the Firm Transportation Agreement. The difference between the *pro forma* FTA Transportation Agreement and the Firm Transportation Agreement with EQT are as follows:

²⁸ Tennessee states that while EQT was the only party to submit a bid for service, and thus, the only party to qualify for Anchor Shipper status, Tennessee would have provided these benefits to any other potential shipper that submitted a qualifying bid in either open season.

²⁹ Tennessee initially requested confidential treatment for the precedent agreement, but later filed the agreement as a public document in its August 31, 2009 Answer to the limited protest and comments.

- (1) the Firm Transportation Agreement contains “Whereas” clauses that describe the Precedent Agreement and the specific transaction between Tennessee and EQT, while the *pro forma* FT-A Agreement does not;
- (2) Article 11 of the Firm Transportation Agreement addresses the commencement date of service, while the *pro forma* FT-A Agreement does not contain commencement date language;
- (3) Article IV of the Firm Transportation Agreement indicates that Tennessee will construct the facilities while Article IV of the *pro forma* FT-A Agreement explains that facilities necessary to provide the transportation service are already in place; and
- (4) Sections 6.1, 9.1, 11.1, and 12.1 of the Firm Transportation Agreement have been modified to reflect the commencement date and that Tennessee must construct facilities to provide service to EQT. In addition, Section 12.1 of the Firm Transportation Agreement has been modified to include roll-over rights provided to EQT as an Anchor Shipper.

37. These differences do constitute material deviations from the *pro forma* agreement found in Tennessee’s tariff, since language different from that in the *pro forma* agreement is deemed to be material.³⁰ However, not all material deviations are impermissible. If the Commission finds that such deviations do not constitute a substantial risk of undue discrimination, the Commission may permit the deviations. The filed service agreement provides for FT-A service in a manner that is consistent with the FT-A service described in Tennessee’s tariff and does not create a risk of undue discrimination against other shippers. Thus, the deviations contained in the non-conforming service agreement are permissible.³¹ Therefore, the Commission will accept the proposed service agreement subject to Tennessee’s making the requisite tariff filings after the service agreement is executed and prior to commencement of service.

³⁰ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003).

³¹ The Commission has previously approved Tennessee’s request for predetermination of firm transportation agreements. *See, e.g., Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,100, at P 25 (2008); 121 FERC ¶ 61,116, at P 11 (2007); 116 FERC ¶ 61,075, at P 20-21 (2006).

2. Tennessee's Open Season Notices

38. The Tennessee Customer Group filed comments arguing that since Tennessee did not provide copies of the open season notices in its application, it was not possible to evaluate whether any of the non-conforming terms in the precedent agreement are unduly discriminatory and unduly preferential. The Tennessee Customer Group requested that the Commission require Tennessee to provide the open season notice, reserving the right to raise or comment on additional issues that may arise in the proceeding.

39. Tennessee's Answer explained that the initial and revised open season notices were posted and made publicly available through its internet website, providing any potential shipper with the opportunity to review the notices, including the Anchor Shipper qualifying criteria and benefits, and to submit a bid. Tennessee further explained that the two open season notices were still posted on its web page and provided the web address. In addition, Tennessee attached copies of the initial open season, the clarification to the initial open season, and the revised open season to its Answer.

40. The Commission finds that Tennessee adequately addressed Tennessee Customer Group's concerns, providing the open season notices and showing that the deviations between the open season notice and the *pro forma* FT-A transportation service agreement are not unduly discriminatory. Further, since Tennessee is requesting negotiated rate authority, it is required, as discussed below, to file the negotiated rate agreement with EQT and highlight any material deviations to the Rate Schedule FT-A service agreement. If the negotiated rate agreement does contain any material deviations, Tennessee may file a tariff sheet reflecting the terms of the agreement. The Tennessee Customer Group will thus have another opportunity to review and comment on EQT's service agreement.

IV. Accounting

A. AFUDC

41. Tennessee proposed to record approximately \$47,641,930 of Allowance for Funds Used During Construction (AFUDC) (\$14.8 million of Equity AFUDC and \$32.8 million of Debt AFUDC) as part of the 300 Line Project. Consistent with the Commission's revised policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*, we will allow Tennessee to include its proposed AFUDC accrual in its initial rates, subject to Tennessee filing a representation

that the proposed AFUDC accruals comply with the revised policy conditions.³² Furthermore, if Tennessee determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it must revise all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. Tennessee must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

B. Abandonment In Place

42. Tennessee proposes to abandon in place certain compressor facilities. Tennessee proposes to treat the abandonment as a normal retirement and account for the abandonment of its facilities by debiting Account 108, Accumulated Provision for Depreciation of Gas Plant in Service, and crediting Account 101, Gas Plant in Service, consistent with Gas Plant Instruction No. 10.³³

43. Additionally, Tennessee proposes to debit Account 282, Accumulated Deferred Income Taxes-Other Property, and credit Account 411.2, Provision for Deferred Income Taxes-Credit, Other Income and Deductions, to reverse deferred income taxes attributable to the abandoned facilities. However, the reversal of deferred income taxes relates to utility operating income, rather than other income and deductions. Therefore, Tennessee is directed to credit the reversed deferred income taxes to Account 411.1, Provision for Deferred Income Taxes-Credit, Utility Operating Income.³⁴

³² See *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010). The revised policy conditions in these orders allow natural gas pipelines to begin accruing AFUDC on construction projects when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress.

³³ 18 C.F.R. Part 201 (2009).

³⁴ See, e.g., *Natural Gas Pipeline Co. of America LLC.*, 126 FERC ¶ 62,064 (2009); *Tennessee Gas Pipeline Co.*, 129 FERC ¶ 62,087 (2009).

V. Environmental Analysis

44. The Commission staff began its environmental review of the 300 Line Project following approval for Tennessee to use the pre-filing process on November 4, 2008, in Docket No. PF09-1-000. As part of the pre-filing review, the staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned 300 Line Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) on February 4, 2009. The NOI was published in the *Federal Register*³⁵ and mailed to over 1,400 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The staff held three public scoping meetings in communities near the proposed facilities to provide the public with an opportunity to learn more about the 300 Line Project and to comment on environmental issues that should be addressed in the Environmental Assessment (EA). The three scoping meetings were attended by a total of 48 individuals.³⁶

45. On June 17, 2009, Commission staff issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned 300 Line Project and Request For Comments On Environmental Issues* to gather input from the public and interested agencies regarding the Eastern Loop Alternative, an alternative configuration of proposed Loop 325 in Sussex and Passaic Counties, New Jersey. Based on the staff's consultation with the U.S. Fish and Wildlife Service (FWS), the Eastern Alternative was developed to avoid the proposed crossing of the Wallkill River National Wildlife Refuge (WRNWR). The supplemental NOI was published in the *Federal Register*³⁷ and mailed to over 230 parties including landowners that would be affected by the Eastern Loop Alternative.

46. We received written and verbal comments during the public scoping period from affected landowners, concerned citizens, government agencies, and other organizations in response to the NOIs and during the scoping meetings. We also received additional written scoping comments after Tennessee filed its application in this proceeding on July 17, 2009. Written comments were received from 16 affected landowners including

³⁵ 74 Fed. Reg. 6870 (2009).

³⁶ The public scoping meetings were held in Vernon, New Jersey, and Montrose and Mansfield, Pennsylvania, on February 24, 25, and 26, 2009, respectively.

³⁷ 74 Fed. Reg. 30,065 (2009).

12 in Pennsylvania and 4 in New Jersey; 4 federal agencies including three offices of the U.S. Fish and Wildlife Service (FWS); 6 state agencies including three in Pennsylvania and 3 in New Jersey; a local agency (Pike County Conservation District) in Pennsylvania; and the Delaware Nation of Oklahoma Tribe. Verbal comments were received from ten individuals at the Vernon, New Jersey public scoping meetings; no comments were received at the other two scoping meetings. The primary issues raised during scoping were residential impacts, erosion potential, revegetation, tree clearing, noise, and impacts on waterbodies.

47. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),³⁸ the staff prepared an EA for the 300 Line Project. The U.S. Department of the Interior's Bureau of Land Management, the U.S. Army Corps of Engineers, and the FWS participated in the preparation of the EA as cooperating agencies. On February 25, 2010, the EA was placed into the public record of this proceeding³⁹ and issued for a 30-day comment period. The EA addressed geology and soils, water resources, fisheries and wetlands, vegetation and wildlife, land use, recreation and visual resources, socioeconomics, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. As summarized below, the EA also addressed all substantive issues raised during the scoping period.

48. In response to landowner concerns, Section 2.4.2 of the EA discussed Tennessee's special construction techniques to minimize project impacts on residential properties and stated that Tennessee would either repair, replace, or compensate landowners for project-related damages. The EA included site-specific construction plans for those residences within 25 feet of the construction work area and requested that landowners comment on the site-specific plans. The EA also recommended that Tennessee file evidence of landowner concurrence with the site-specific residential construction plans for all locations where construction work areas would be within 10 feet of a residence unless the construction work area is part of the existing permanent right-of-way. The EA concluded that implementation of the special construction methods and site-specific plans would minimize disruption to residential areas to the extent practicable and facilitate restoration of these areas as soon as possible upon completion of construction.

³⁸ 42 U.S.C. §§ 4321-4370f (2006).

³⁹ A notice announcing the availability of the EA was published in the *Federal Register* on March 5, 2010, 74 Fed. Reg. 10,242.

49. Landowners were also concerned about the loss of trees, increased erosion, and impacts on wildlife, groundwater, surface water bodies, and wetlands on and near their property. The EA analyzed the potential impacts on water resources and wetlands, soil, vegetation, and wildlife and evaluated alternative routes to minimize these impacts. The EA concluded that in most cases, Tennessee's proposal to reduce the construction workspace by locating the proposed loops adjacent to the existing 300 Line pipeline and its adherence to the project-specific Environmental Construction Plan (ECP) would minimize these impacts. However, staff did recommend two route variations to address landowner concerns. These recommended route variations were incorporated into environmental conditions 22 and 23.

50. Several landowners submitted concerns that the 300 Line Looping will encumber the use of their property and decrease property values. The EA indicated that Tennessee's easement agreements with landowners would specify compensation for project-related losses and identify any restrictions regarding the use of the new permanent right-of-way. Where Tennessee has an existing pipeline, the restrictions would be consistent with those identified in Tennessee's existing easement agreements. The EA found no basis to conclude that property sales, demand, and development decisions would be significantly impacted along natural gas pipelines. Landowners who believe that their property values have been negatively impacted could appeal to the local taxing authority for reappraisal and potential tax reduction.

51. Several commenters expressed concerns regarding operational noise at new and modified compressor stations. As discussed in the EA, the predicted noise levels from the new and modified compressor stations at the nearest noise-sensitive areas will not exceed a day-night sound level of 55 decibels on the A-weighted scale (dBA), which is the U.S. Environmental Protection Agency (EPA) criteria the Commission has adopted to protect the public from indoor and outdoor activity interference due to noise. The EA recommends that Tennessee file the results of noise surveys taken after placing the new and modified compressor stations into service, and install noise mitigation measures, if necessary.

52. The Northeast Pennsylvania Audubon Society expressed opposition to further expansion of the existing 300 Line right-of-way in the Upper Delaware Important Bird Area (IBA). The EA addressed potential project impacts on the Upper Delaware IBA, which is one of the most important sites in Pennsylvania for bald eagles and migrating and wintering water fowl. Field surveys by Tennessee did not identify any bald eagle nests in the project area and the 300 Line Project would not be located in the prime habitat areas within the IBA for migrating bird species. As a result, the EA concluded that the project would not be expected to impact bald eagles and impacts on migrating bird species would be minimal.

53. The Delaware Nation of Oklahoma requested to be kept informed of the EA and any cultural resource findings. In response to this request, the EA recommended that Tennessee file a record of consultation with the Delaware Nation of Oklahoma. Staff also recommended that Tennessee file documentation of consultation with the Morris County Trust for Historic Preservation based on its concern regarding the potential for Loop 325 to affect historic properties in the project area.

54. The Lake Conway Association provided verbal comments at the Vernon Scoping Meeting stating that it did not oppose the project but voiced concern that Tennessee would not mitigate for impacts on Lake Conway and association residents near Milepost 6.0 of Loop 325. As discussed in the EA, Tennessee proposes to avoid Lake Conway and associated residences by installing Loop 325 in this area using the horizontal direction drill technique.

55. The proposed pipeline would cross land managed by the states of Pennsylvania and New Jersey. Within the Susquehannock and Delaware State Forests, the Pennsylvania Department of Conservation and Natural Resources Bureau of Forestry (PABF) requested that designated waters be crossed using the bore method. Tennessee proposes to cross these waterbodies using standard dry crossing techniques, which minimizes suspension of sediments and sedimentation during the construction within the waterbody. The EA found that using the bore within the state forests would increase impacts over the proposed crossing method due to the need for additional temporary work space (ATWS) and the presence of stony soils that could render the bored crossings difficult to accomplish. However, the staff recommended that Tennessee provide the Commission with final plans for construction and restoration within the state forests that have been developed in consultation with the PABF.

56. In New Jersey, the proposed pipeline would cross land in the state's Green Acres Program and other recreation areas within the Highlands Region. Tennessee committed to mitigate project impacts in accordance with the requirements of the Green Acres Program and obtain other state permits and approvals to construct and operate the project in New Jersey. Tennessee further committed to continue consultation with the staffs of various recreational areas within the Highlands Region. The EA recommended that Tennessee provide the Commission with the final construction and restoration plans for three specific areas within the Highlands Region.

57. Following issuance of the EA, we received comments from ten affected landowners in Pennsylvania and two in New Jersey;⁴⁰ one concerned citizen in New Jersey (Donna Baker); four state agencies including two in Pennsylvania (PAGC and PABF) and two in New Jersey (NJDEP and New Jersey State Historic Preservation Office (SHPO)); one Pennsylvania county agency (Pike County Conservation District); and one Pennsylvania local environmental organization (The Council on Greenways and Trails). Tennessee also filed comments on the EA and responded to comments filed during the EA comment period. Seven of the eighteen parties that filed comments on the EA revisited matters previously raised and fully addressed in the EA and are summarized above. Substantive comments received in response to the EA are addressed below.

58. In his EA comments, Brian Ward clarified that he is the owner of the residence near MP 12.2 of Loop 323 and not Wayne A. and Galina Tucker (as indicated in the EA). He also commented that tree and boulder removal on his property would reduce the aesthetic value of the property and that he was not amenable to any proposed alteration of the landscape. The site-specific drawing in the EA depicts additional temporary work space that would involve tree clearing in close proximity to his residence for the crossing of Pinetree Road. The EA also discussed how Tennessee would avoid removal of mature trees unless needed for safe construction of the project, and restore residential land to pre-construction conditions (which could include boulder fields/rock formations to the best of Tennessee's ability) or as specified in written landowner agreements. Although tree clearing and construction activities could affect the aesthetic value of the property, we believe that the measures listed above and detailed in the site-specific plan for this residence would minimize such impacts.

59. Lisa Groner, a homeowner near new Compressor Station 303 expressed noise concerns and requested a copy of Tennessee's sound survey conducted in January 2009.⁴¹ Currently, the existing sound level at Ms. Groner's residence is 46.2 dBA, and the

⁴⁰ EA comments were filed by the following ten affected landowners in Pennsylvania: Brian Ward, Lisa Groner, Lawrence Chesnick, Maryann Durko McCusker, William Eberhardt, Roger Olver, Lori Curtis, Robert and Debra Rickert, Loni Kuhn, and Steve and Lisa Rivers. Tim Rowett and Mike Cunnington also filed comments as affected landowners in New Jersey.

⁴¹ This survey report was filed by Tennessee on July 17, 2009 as Attachment C to Resource Report 9 and is available on our website at www.ferc.gov, in the eLibrary under Accession Number 20090717-4007.

estimated sound level due to operation of Compressor Station 303 is expected to be 51.7 dBA, based on Tennessee's noise survey. This is below our noise criteria of 55 dBA. Environmental Condition 21 requires that Tennessee file the results of noise surveys taken after placing the new and modified compressor stations into service and if the sound level exceeds a day-night sound level of 55 dBA, Tennessee must implement additional noise mitigation. We believe that these measures would adequately minimize noise impacts associated with operation of Compressor Station 303.

60. Ms. Groner also indicated that the forest between her property line and the compressor station is not dense and mature, as described in the EA, and that the compressor station would be completely viewable from her residence. In its comments on the EA, Tennessee informed the Commission that the Compressor Station 303 layout had been reconfigured to reduce tree clearing, and provided a drawing depicting the new layout. Based on this reconfiguration, nearly all of the existing forest between the Groner residence and the compressor buildings would remain intact. As reconfigured, the compressor buildings would be approximately 1,100 feet from the Groner home, of which approximately 725 feet would consist of nearly contiguous forest. We believe Tennessee's new layout would significantly reduce or eliminate the visibility of the facility from the Groner residence and therefore, adequately reduce visual impacts.

61. Ms. Groner also stated that the compressor station would reduce her property's value. While the EA referenced a 2001 study that did not find any correlation between pipelines and property values, Ms. Groner noted that the study only applied to pipelines and not to compressor stations. Appraisal methods used to value land are based on objective characteristics of the property and consideration of any modifications; subjective valuation is generally not considered in appraisals. The impact that a compressor station may have on property value depends on many factors including size, existence of other pipelines, the current value of the property, and current land use in the area. A potential purchaser of property would make a decision to purchase based on his/her planned use of the property in question. If the presence of a compressor station renders the planned use infeasible, it is possible that a potential purchaser would decide not to purchase the property. Each potential purchaser, however, could have different considerations and differing capabilities to purchase property. As noted in the EA, landowners who believe that their property values have been negatively impacted could appeal to the local taxing authority for reappraisal and potential tax reduction.

62. Lawrence Chesnick and Maryann Durko McCusker commented on the restricted use of their properties if Tennessee were to acquire an additional easement, and that the compensation for such an easement would be unfair. The EA addressed how Tennessee would obtain easements from affected landowners to construct and operate proposed facilities, or acquire the land on which the facilities would be located. An easement agreement between a company and a landowner typically specifies compensation for losses resulting from construction (including losses of non-renewable and other

resources), damages to property during construction, and restrictions on existing uses that would not be permitted on the permanent right-of-way after construction, likely similar to those on the existing Tennessee easement. Although permanent structures would not be allowed within the easements, as discussed in the EA, the landowners would continue to have use of the right-of-way provided it does not interfere with the easement rights granted to Tennessee for construction and operation of the 300 Line Project.

63. William Eberhardt, who had previously filed scoping comments, requested reconsideration of the EA's determination that the alternative placement of Loop 319 on the south side of Tennessee's existing pipeline on his property (referred to as the Eberhardt Variation in the EA) is not environmentally superior to the proposed alignment along the north side of the pipeline. Mr. Eberhardt also commented that the recommendation in the EA should have included Commission notification of any unresolved issues; detailed procedures to avoid drainage of the wetland on his property (wetland 319W010); and a pre-determined threshold for successful reestablishment of the wetland. As stated in the Environmental Condition 15, Tennessee would be required to submit a revised site-specific plan documenting special considerations and agreements reached as a result of consultations with the landowner, North Branch Land Trust, and Natural Resource Conservation Service. We believe that the outcomes of these consultations would address Mr. Eberhardt's comments. For reasons discussed in the EA and considering the requirements of Environmental Condition 15 pertaining to the Eberhardt property, we reaffirm the EA's conclusion that the Eberhardt Variation is not environmentally preferable to the proposed alignment across the Eberhardt property.

64. Mr. Eberhardt stated that the current site-specific plan for wetland 319W010 only includes six site-specific measures; however, the EA mentions 11 protective measures in its discussion of wetlands on page 2-29, and these 11 measures should also apply to wetland 319W010. The 11 measures listed are measures taken from Tennessee's ECP. All applicable measures listed in Tennessee's ECP would apply to wetland 319W010, including the 11 mentioned on page 2-29 of the EA and we believe impacts on wetland 319W010 would be minimized to the extent possible.

65. Mr. Eberhardt also suggested that reversing the direction of the boring that would be implemented to cross State Route 367 would reduce impacts on his property. However, site-specific drawings filed by Tennessee for this property indicate that bore pits of approximately the same dimensions would be needed on both sides of State Route 367 to accomplish the road crossing; thus, reversing the direction of the drill would not substantially alter the impact on the affected properties. Therefore, we believe there is no reason to reverse the direction of the proposed borings or require changes to Tennessee's site-specific drawing at this location.

66. Roger Olver expressed concern that he would not be fairly compensated for the new permanent easement on his property near MP 15.0 of Loop 321. According to

Mr. Olver, the width of the existing easement for the 300 Line on his property is unspecified; but alignment sheets filed by Tennessee indicate a 150-foot-wide easement on his property. On this basis, Mr. Olver contends that Tennessee would not require any additional permanent easement on Mr. Olver's parcel. The environmental impacts associated with the construction and operation of Loop 321 were considered in the EA. However, the question of whether Tennessee would be required to obtain a new permanent easement to operate a new pipeline loop in those areas where the width of its existing easement is not specified is a matter of negotiation and compensation between the landowner and Tennessee.

67. Lori Curtis stated concern regarding the potential for the project to impact her source of potable water near MP 7.9 of Loop 321. As indicated in the EA, Tennessee identified a drinking water well approximately 40 feet outside of the construction work area at MP 7.9. The EA discusses the measures that Tennessee would take to protect water supply wells, including providing an alternative water source or other compensation to landowners whose wells are temporarily impacted, and/or repairing or replacing wells that are permanently damaged. Therefore, we believe that Tennessee has proposed sufficient measures to minimize impacts on potable water sources on Ms. Curtis's property.

68. Robert and Debra Rickert filed general comments concerning potential impacts on their property near MP 20.6 of Loop 321, including impacts on their drinking water supply, wetlands, trees, pasture, wildlife habitat, and recreational uses including hunting. We believe the EA adequately addresses potential impact on these resources. The Rickerts also question the need for a new access road (Access Road No. 13) to cross their property, given that an existing road (Township Road 480/Brook Road) crosses the Loop 321 right-of-way approximately 1,000 feet away. Upon further review, we concur that proposed Access Road No. 13 appears unnecessary and we have revised Environmental Condition 16, to preclude construction or use of Access Road No. 13.

69. Loni Kuhn commented that he would prefer that Loop 323 be installed along the south side of Tennessee's existing pipeline on his property near MP 2.2, rather than along the north side as proposed. According to Mr. Kuhn, an alignment along the north side of the existing pipeline could impact a timber rattlesnake den approximately 50 feet to the north of Tennessee's existing right-of-way, and would interfere with his plans to build a home just to the north of the existing right-of-way, along the Lackawaxen River. In response to Mr. Kuhn's comments, Tennessee clarified that the timber rattlesnake den referenced by Mr. Kuhn is actually located approximately one mile to the east of the Lackawaxen River crossing. Tennessee has consulted with the PAFBC and plans to conduct additional surveys to determine the location of rattlesnake den entrances and the extent of denning habitat. Upon completion of the surveys, Tennessee would further consult with the PAFBC to develop timber rattlesnake impact avoidance and/or

mitigation measures. Tennessee's proposed measures ensure sufficient protection for timber rattlesnakes along the construction right-of-way.

70. Mr. Kuhn did not provide a detailed location where he plans to build his home. Locating Loop 323 to the south of the existing pipeline on Mr. Kuhn's property would require Tennessee to cross over the existing pipeline at two locations, resulting in overall increased environmental impact and potentially impacting additional landowners. We note that Tennessee has an existing easement on Mr. Kuhn's property and it appears that Tennessee would not require any additional permanent easement for installation of Loop 323. Therefore, we conclude that an alignment to the south of the existing pipeline on Mr. Kuhn's property is not environmentally preferable to the proposed alignment. Landowner negotiations concerning an easement for construction of Loop 323 would afford Mr. Kuhn an opportunity to request measures to minimize impacts to his future building site.

71. Mike Connington, a home owner near MP 6.3 of Loop 325, raised concerns regarding potential project impacts on his property. As described in the EA, Tennessee would install Loop 325 between MPs 5.8 and 6.5 by using the HDD method, which would avoid surface impacts on Mr. Connington's property.

72. Steve and Lisa Rivers filed similar comments to the comments they filed during the scoping period concerning the project impact on their well, septic system, surface water resources, and home near MP 0.0 of Loop 321.⁴² Tennessee previously clarified that while Loop 321 would not cross the Rivers' property, construction and permanent rights-of-way would extend onto the Rivers' property. The EA addressed the concerns raised by the Rivers, and Tennessee's previous commitments to make every effort to protect and mitigate any project-related damages to the Rivers' home, septic system, well, or surface water resources. We believe the measures discussed in the EA and Tennessee's commitment will adequately protect the resource concerns identified by the Rivers.

73. Tim Rowett commented that construction of the project along Loop 325 could impact a historic family cemetery near Vernon, New Jersey; however, Tennessee's construction right-of-way for Loop 325 does not cross the cemetery. In its April 14, 2010 response to this comment, Tennessee indicated that the cemetery is located approximately

⁴² The Rivers' residence is located over 100 feet from the construction right-of-way and Tennessee's existing permanent easement.

270 feet to the north of Tennessee's existing line, and the cemetery would be approximately 150 feet north of the edge of the construction right-of-way. We believe that the cemetery is located at a distance far enough from the construction right-of-way to ensure that no impacts would occur.

74. Donna Becker commented that the EA should have examined other existing pipeline systems or routes that would avoid or alleviate the environmental impact of the 300 Line Project in New Jersey. The EA examined four pipeline system alternatives and found that they were all fully subscribed and would not meet the 300 Line Project objectives. Specifically, Ms. Becker believes that the EA should have analyzed the potential use of the Millennium Pipeline Company's (Millennium) natural gas pipeline system, which extends from an interconnection with National Fuel Gas Supply in Steuben County, New York to its terminus in Rockland County, New York. No system alternative making use of Millennium's system was identified during scoping, nor were any Millennium system alternatives analyzed in the EA. Ms. Becker comments that Millennium: (1) runs parallel to the Tennessee system; and (2) delivers into the same interstate pipeline as does Tennessee, which is Algonquin Gas Transmission Company (Algonquin), at Ramapo, New York (i.e., downstream from New Jersey). Further, Ms. Becker notes that Millennium has held two open seasons for both available and expansion capacity.

75. Ms. Becker discusses three possible transportation paths using multiple, existing pipelines to transport the 300 Line Project expansion volumes to Algonquin at Millennium's Ramapo, New York interconnect. The first option would have Tennessee deliver the expansion volumes into Millennium at their common interconnect in Steuben County, New York, and then transport Tennessee's proposed volumes through Millennium's system to the Ramapo interconnect with Algonquin.⁴³ The second option would have Tennessee utilize Central New York Oil and Gas, L.L.C.'s existing Stagecoach Storage system to deliver the expansion volumes into Millennium for delivery into Algonquin at Ramapo. Finally, a third option would have Tennessee deliver the expansion volumes into the Columbia Gas Transmission (Columbia) pipeline system in Pike County, Pennsylvania, to redeliver the expansion volumes into Millennium in

⁴³ Currently, Tennessee does not have an interconnection with Algonquin at Ramapo. The project volumes would have to be delivered by displacement to Tennessee about 7.1 miles west of Ramapo at Tennessee's interconnection with Algonquin at Mahwah, New Jersey. This alternative would also require additional facilities along Columbia Gas Transmission's Pipeline System.

Sullivan County, New York, with Millennium delivering the expansion volumes into Algonquin at Ramapo.

76. We have examined the alternatives suggested by Ms. Becker and conclude that each alternative is hydraulically feasible; however, the use of the existing systems suggested by Ms. Becker would require that they be modified or that new facilities be constructed in order to transport the additional volume of natural gas proposed by Tennessee. For example, use of the Millennium system at Tennessee's interconnect in Steuben County, New York consists of a single 10-inch and 12-inch-diameter pipeline which is currently transporting about one tenth of the 300 Line Project volumes. In order to transport the additional 350 MDth/d through this portion of the system, Millennium would need to either loop or replace the existing small-diameter pipeline with either 24- or 30-inch-diameter pipe. In addition to these modifications, Millennium's 30-inch-diameter pipeline downstream of the Corning Compressor Station would also require additional facilities due to the pressure drop associated with the additional gas volumes. Millennium would need: (1) additional compression at its existing Corning Compressor Station; (2) two new compressor stations between the existing Corning Compressor Station and the interconnect between Millennium and Columbia at Wagoner; and (3) 24- or 30-inch-diameter pipeline looping downstream of Wagoner, New York. In addition, because of the increase in Millennium's system operating pressures at Wagoner, additional compression would also be necessary at Columbia's Milford Compressor Station to deliver current gas volumes into Millennium.

77. The other two system alternatives also have similar shortcomings. The second alternative suggested by Ms. Baker would deliver the project volumes into Millennium using the Stagecoach North and South Laterals, which currently connect the Stagecoach Storage Facility to Millennium and Tennessee. Based upon our review, Millennium would require additional compressor stations and additional pipeline looping. As with the first alternative, additional compression would be required at Columbia's Milford Compressor Station to deliver current gas volumes into Millennium. This alternative would still require all facility modifications proposed by Tennessee on its 300 Line extending from Compressor Station 219 through Compressor Station 319.

78. The last alternative suggested by Ms. Becker would use Tennessee's existing interconnect with Columbia in Pike County, Pennsylvania, to deliver the 350 MDth/d project volumes to Algonquin at Ramapo through Millennium. In order for this alternative to work, the project volumes would need to be re-pressurized at the Milford Compressor Station and flow through Columbia's Line K to Columbia's interconnect with Millennium at Wagoner. Once again, Millennium would require a new compressor station, and Columbia would require additional horsepower of compression at its Milford Compressor Station and pipe replacement of the 14-inch-diameter Line K with 24-inch-diameter pipe. As with the second alternative, this alternative would still require all

facility modifications proposed by Tennessee on its 300 Line extending from Compressor Station 219 through Compressor Station 325.

79. In conclusion, the system alternatives suggested by Ms. Becker would require either new construction and/or the modification of existing facilities, resulting in environmental impacts. In addition, the new or modified facilities would need to undergo a lengthy design process, environmental analysis, and permitting which would not meet the 300 Line Project delivery timeframe. Also, additional rates would be applied for each additional pipeline system used to transport the gas which could make the project economically infeasible. Thus, we conclude that the system alternatives suggested by Ms. Becker are not preferable to the 300 Line Project expansion.

80. The Council on Greenways and Trails expressed concern with Tennessee's plan to permanently fill approximately 0.8 acre of wetland at proposed Compressor Station 303. Subsequent to issuance of the EA, Tennessee filed a reconfiguration of the compressor station that would result in no permanent wetland fill, although 0.03 acre of wetland would be temporarily impacted during construction. The wetland would be restored in accordance with the ECP and any applicable Pennsylvania Department of Environmental Protection general permit conditions. Thus, construction and operation of Compressor Station 303 would have no significant impact on wetland resources. The Council on Greenways and Trails also questioned the source and discharge location of hydrostatic test water for Compressor Station 303. As indicated in the EA, Tennessee estimated that it would obtain approximately 81,000 gallons of water for hydrostatic testing for this compressor station from an on-site water supply well, and that the water would be discharged in accordance with its ECP and in consultation with the applicable local municipality. As discussed in the EA, we believe these measures sufficiently protect water resources in the proposed project area.

81. Pike County Conservation District commented on the EA and recommended that project construction procedures be amended to prohibit repeated fording of special protection waters. Pike County Conservation District commented that beginning restoration in areas of rugged topography within 10 days of final pipeline installation does not provide sufficient protection from erosion and sedimentation, and conflicts with Pennsylvania Chapter 102 requirements that construction areas be stabilized immediately after completion of earth disturbing activity in special protection watersheds. Pike County Conservation District also expressed concern regarding Tennessee's waterbody crossing restoration procedures and hydrostatic test water sources, and requested the ability to review additional information regarding access roads in Pike County.

82. To prevent the deposition of sediment into sensitive resources, Tennessee's ECP requires them to immediately implement best management practices after the initial disturbance of soils, and requires them to inspect and maintain all temporary erosion control measures to ensure that the right-of-way is stabilized during construction. These

measures include the installation of access bridges across special protection waters, temporary slope breakers, temporary trench breakers, sediment barriers along the edge of the right-of-way in proximity to waterbodies, installation of sediment barriers across the right-of-way at the base of slopes, and restoration timing restrictions for waterbody crossings. Following the trench backfill operations, Tennessee is also required to immediately commence cleanup activities along the right-of-way to include final grading, topsoil replacement, installation of permanent erosion control measures, and reseeded. We believe that Tennessee's implementation of these measures will sufficiently protect waterbodies along the Project right-of-way from degradation. To ensure compliance with the Pennsylvania state requirements, Tennessee is currently consulting with the county conservation district offices regarding its project specific erosion and sedimentation control plan and anticipates completion of this consultation in June 2010. These consultations could require Tennessee to adopt additional site-specific measures.

83. Concerning the outstanding information on proposed access roads, as required by Environmental Condition 16, Tennessee would need to file any outstanding information on access roads and document that the necessary approvals have been obtained. Pike County Conservation District would have the opportunity to review the outstanding information when Tennessee files the information in the public record.

84. Pike County Conservation District commented that the cumulative impacts analysis within the EA should have addressed the potential for concurrent construction of the 300 Line Project, Susquehanna-Roseland Electric Transmission Line, the Columbia Gas Pipeline (Line 1278/Line K Replacement) Project, and activities associated with the development of natural gas within the Marcellus Shale to impact surface waters and wetlands in Pike County. We believe that the EA adequately addressed the Susquehanna-Roseland Electric Transmission Line project and Marcellus Shale activities; however, the Line 1278/Line K Replacement Project was not addressed as it was only recently approved for environmental review under our pre-filing process (Docket Number PF10-6-000). The nearest approach of the Line 1278/Line K Replacement Project to Loop 323 of the 300 Line Project is approximately 3 miles, and the projects are oriented perpendicular to one another. The two projects may each cross one special protection water system, Salvantine Creek/Sawkill Creek, but the crossings would be separated by approximately 10 miles of watercourse. As a result, we do not believe that concurrent construction of the projects would have a significant cumulative impact on special water resources in Pike County.

85. The Pennsylvania Game Commission (PAGC) commented that there are no known occurrences of state listed threatened or endangered bird or mammal species associated with the project. PAGC further stated that two species of special concern, the Silver-haired Bat and the Northern Myotis, may occur along portions of Loop 315. PAGC recommended that the clearing of trees greater than five inches in diameter be conducted between November 1 and March 31. In its March 29, 2010 response to

comments, Tennessee committed to conduct tree clearing along Loop 315 in accordance with PAGC requirements. The PABF provided an update of consultations with Tennessee and noted that additional information will be needed from Tennessee in order to complete its review of the proposed crossings of the Susquehanna and Delaware State Forests. PAGC also noted that additional coordination between the PAGC and Tennessee is necessary regarding construction of Loop 323 on State Game Lands No. 116. Environmental Condition 18 requires Tennessee to develop final construction and restoration plans for State Game Lands No. 116 and the state forests in consultation with the PAGC and PABF and to file the final plans.

86. The PABF also commented that the construction workspace within the state forests is excessive, and noted discrepancies between tables 2.3.2-2 and 2.4.3-1 of the EA which list the areas within each state forest that would be impacted by construction and operation of the project. Based on our review of the project, we find that the proposed construction right-of-way is appropriate considering the 30-inch-diameter of Loop 323, topography and other land features, and that Loop 323 would be installed approximately 25 feet from an existing, in-service natural gas pipeline. We also clarify that table 2.4.3-1 correctly presents the areas determined by Tennessee that would be disturbed by project construction and operation within the Susquehanna and Delaware State Forests. Tennessee's compliance with Environmental Condition 18 affords additional opportunities to further minimize impacts on the state forests.

87. The PABF recommends that the project avoid construction in wetlands. Due to the linear nature of the project and the widespread distribution of wetlands in the project area, avoiding all construction within wetlands is not feasible. Rather, we believe that overall environmental impact is minimized by collocating construction of new pipeline adjacent to an existing pipeline when compared to construction in a new corridor through similar terrain.

88. The PABF questions the process by which natural gas market areas are identified and how new natural gas infrastructure is sited to most efficiently meet the required capacity. These processes are generally governed by market conditions in which a customer requires a volume of natural gas to be delivered to a particular location or locations, and then seeks the most efficient means to obtain the gas. If existing pipeline capacity is not available at the necessary locations, then new infrastructure may be proposed. As required by NEPA, we determine the environmental impact of projects under our jurisdiction and, if found to be in the public convenience and necessity, require that they be sited, constructed, and maintained in a manner that minimizes impacts to the extent practicable.

89. Finally, the PABF is concerned that Tennessee may complete looping of the 300 Line at some point in the future, which would impact additional state forest lands, and questions whether the 300 Line Project was sited to largely avoid state forest lands in

order to ease future permitting in state forest land. The length and location of pipeline looping segments is largely determined by the volume of gas to be delivered, the location of the delivery points, and the location of existing compressor stations. The EA evaluated Tennessee's proposed expansion facilities and several major and minor route alternatives. These alternatives were considered based on scoping comments in an effort to minimize impact of the proposed project. While no specific alternatives were raised during the scoping period to minimize impacts on state forests in Pennsylvania, the EA did evaluate state forest land impacts and recommended further coordination in Environmental Condition 18. Any further expansion of the 300 Line would require the Commission to complete a separate NEPA review. Our policies and procedures also require that new infrastructure avoid or minimize impacts on environmentally sensitive areas, such as state forest land, to the extent practicable. As in the 300 Line Project, the proponent of any future project under our jurisdiction affecting PABF lands would be required to consult with and obtain necessary permits and approvals from the PABF.

90. The NJDEP filed comments primarily related to the consultations that Tennessee must conduct with various departments and the additional construction and mitigation measures that may be required of Tennessee through state permits. These comments were similar to those submitted by NJDEP during the scoping period. NJDEP also indicated that it was not in receipt of information necessary for completion of its permitting process. As addressed earlier in this order, the EA recognized that consultations between the NJDEP and Tennessee were on-going and that specific construction and mitigation measures could be required as conditions of state permits. In its response to comments, Tennessee acknowledges that the NJDEP concerns are currently being, or will be addressed, through the regulatory processes for each of the NJDEP divisions. We believe that a majority of the comments by NJDEP are more properly addressed as a requirement of any permits issued by the state agencies.

91. NJDEP stated that the Commission should determine that there is a need for the project. By this order, the Commission has determined that the project is required by the public convenience and necessity; there is a need for the project.

92. NJDEP also commented that alternatives need to be addressed. In section 3 of the EA, alternatives were addressed. These alternatives were based on comments received from agencies and landowners, coordination with cooperating agencies, and staff's review. The EA did not recommend any alternatives in New Jersey because of the increased environmental impacts associated with the alternatives.

93. NJDEP indicated that extra workspaces in close proximity to wetlands, forested areas, and on steep side slopes need to be justified. Included in the EA is a table of extra workspace that contains specific justification for each of the extra workspaces. The areas in question by the NJDEP are areas that typically require extra workspace in order to

safely construct the project and minimize direct impacts on resources such as wetlands and waterbodies, therefore, we believe they are necessary.

94. NJDEP discussed timing restrictions for construction within waterbodies or the riparian areas associated with them. Where they relate to crossing of waterbodies (work within the stream banks), Tennessee is required by its ECP to adopt NJDEP's timing restrictions. The NJDEP Bureau of Freshwater Fisheries has found the timing restrictions/windows as presented in the EA to be consistent with the restrictions NJDEP would provide.

95. NJDEP also commented on Tennessee's consultation with the Green Acres Program and indicated it has concerns with the timeline by which Tennessee has requested approvals be received. As previously mentioned, Tennessee has committed to addressing concerns with NJDEP and the Green Acres Program through the appropriate regulatory process.

96. NJDEP noted their concurrence with the mitigation measures that were recommended by the FWS in section 2.3.3.2 of the EA. The NJDEP's Office of Natural Lands Management raised concerns about state threatened and endangered plants. As stated in the EA, Tennessee has committed to mitigation techniques to minimize the impact on rare or listed plants in Pennsylvania and New Jersey. Prior to construction activities, Tennessee will clearly mark and fence the areas along the pipeline route where rare plants are located. Where possible, workspaces would be shifted to avoid impacting rare plant populations. In addition, an environmental inspector would monitor construction activities in rare plant habitat to ensure that construction personnel do not disturb rare plant species. In areas where the avoidance of rare plants is not possible, plants may be relocated. In its response to comments, Tennessee has committed to working closely with the NJDEP in respect to the identified rare plant species. Tennessee will not conduct activities within areas containing state-listed rare plants until applicable approvals are received from the NJDEP. We believe these measures would avoid or minimize impacts and help protect state threatened and endangered plant species.

97. The NJDEP commented on project-related impacts on air quality as a result of construction and operation. Specifically, the NJDEP was concerned with construction emissions associated with diesel-fueled equipment and recommended that Tennessee adopt certain measures to minimize the impact of diesel exhaust emissions. In its response to comments, Tennessee indicated that it would comply with these recommendations to the extent practical. Generally, Tennessee's contractor would limit construction equipment idling to no more than three minutes at one time. Tennessee stated that its contractor would use ultra-low sulfur diesel fuel, where available, for on-road diesel vehicles and non-road diesel construction equipment; meet the EPA's 2007 on-road emission standards for all on-road diesel vehicle engines; and meet the EPA's Tier 4 non-road emission standards for all non-road diesel construction equipment

engines. We find Tennessee's commitment to implementing NJDEP's recommendations acceptable.

98. The NJDEP commented on the effects of ground-level ozone on human health and its precursors, nitrogen oxides and volatile organic compounds, being emitted during construction and stated that it believes the air quality impacts could be significant. We acknowledge that air quality in the immediate vicinity of the project would be affected during construction; however, for the majority of the project, pipeline construction moves through an area relatively quickly and air emissions are typically intermittent. Air emissions associated with compressor station construction are limited to the immediate vicinity of the existing station; these construction emissions are estimated to be considerably less than those associated with pipeline construction. Further, the analysis in the EA shows that the estimated construction emissions for this project would not contribute to any violation of the National Ambient Air Quality Standards (NAAQS) or exceed any thresholds for General Conformity Rule,⁴⁴ thereby demonstrating that construction of the project would not significantly impact the regional air quality. Finally, Tennessee would apply certain mitigation measures as required by the Pennsylvania Department of Environmental Protection and the NJDEP to minimize the construction-related impact on air quality.

99. The NJDEP also commented that the *de minimis* emissions levels established for General Conformity for severe ozone non-attainment areas should have been used instead of those for moderate ozone nonattainment areas, to prevent backsliding and meet the goals of the Clean Air Act to achieve attainment of the ozone NAAQS. Under the 1-hour ozone standard, several project areas subject to General Conformity were designated as severe ozone non-attainment, including the portion of this project in the New York-Northern New Jersey-Long Island Air Quality Control Region in Passaic and Sussex Counties, New Jersey. However, the 1-hour ozone standard was revoked on June 15, 2005, and replaced with the 8-hour standard. Under the 8-hour standard, the applicable areas are designated as either maintenance areas or moderate non-attainment areas. Commission staff consulted with the EPA to ensure that General Conformity is based on the non-attainment status and the 8-hour ozone standard is applicable to the project. The EA correctly applies the moderate ozone non-attainment area designations under EPA's 8-hour ozone standard.

⁴⁴ Codified in 40 C.F.R. § 93.

100. In a letter dated March 22, 2010, the New Jersey SHPO provided comments on Tennessee's cultural resources survey report and addendum report for the WRNWR. The SHPO requested Phase II work plans or avoidance plans for four prehistoric sites (28-SX-405, SUX-02, 28-SX-273, and 28-SX-454); an avoidance plan for one historic site (28-PA-186); and additional Phase II historical research or an avoidance plan for a second historic site (PAS-01). The SHPO also requested additional information on a stone mound and wall within the WRNWR, as well as the scope of shovel testing within the refuge. We note that Environmental Condition 20 requires Tennessee to complete consultation with the FERC and the NJ SHPO prior to construction.

101. Tennessee's comments on the EA included certain updates and clarifications. Tennessee indicated that it would complete winter tree clearing for Loop 315 to mitigate impacts on a state-listed species but will not construct Loop 315 during the winter as stated in the EA. Tennessee also indicated Access Road 6 would be required for permanent access.

102. Tennessee indicates that EA figures 1.5-1 and 1.5-2 show the incorrect starting locations for the proposed facilities. We note that these maps in the EA show the "general locations" of the facilities, are not to scale, and are meant to provide a general understanding of the project facilities and approximately where they will be located. The U.S. Geological Survey maps included in appendix A-1 of the EA show the detailed location of the facilities.

103. Tennessee also indicated that table 1.7.2.1 of the EA does not show the updated locations of the horizontal directional drills (HDD) that will be performed for the project. Although the table incorrectly lists the locations for the HDD, we confirm that the appropriate locations of the HDD were used for the staff's analysis included in the EA, as well as the basis for the staff's determinations of the impacts of project.

104. Tennessee indicates that the residential construction plan Drawing TE-T10-300-2-68I-RP-72 was not included in appendix H of the EA. However, Tennessee filed this drawing with the Commission on September 10, 2009, and it is included in the public record for this project. This drawing was not included within the site-specific residential construction plans in the EA because it is a site-specific drawing for two commercial buildings that are both over 50 feet from the edge of the construction work area.

105. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Tennessee's application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

106. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction, replacement, or operation of facilities approved by this Commission.⁴⁵

VI. Conclusion

107. For all of the reasons discussed above, and with the conditions imposed herein, the Commission finds that Tennessee's proposal is required by the public convenience and necessity and we are issuing the requested certificate and abandonment authorizations.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Tennessee to construct, own and operate the facilities, as more fully described in the application and in this order.

(B) Tennessee is authorized to abandon the compressor facilities that will be replaced by the Replacement facilities, as more fully described in the application and this order.

(C) Tennessee shall complete the construction and replacement of the respective facilities and make them available for service within one year of the date of the order, pursuant to section 157.20(b) of the Commission's regulations.

(D) The authorization in Ordering Paragraph (A) is conditioned on Tennessee's compliance with the provisions of all applicable Commission regulations and the NGA, including, but not limited to, sections 157.20 (a), (c), (e), and (f) of our regulations.

⁴⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 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) The authorization in Ordering Paragraph (A) is conditioned upon Tennessee's compliance with the environmental mitigation measures set forth in the appendix to this order.

(F) Tennessee shall notify the Commission's environmental staff by telephone, electronic mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tennessee. Tennessee shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) Prior to commencing construction, Tennessee must execute and file a firm service agreement equal to the level of service reflected in its precedent agreement with EQT.

(H) Tennessee is required to revise its recourse rates in accordance with the discussion in the body of this order, filing the revised recourse rate and work papers supporting the rate within 30 to 60 days period to the service going into effect.

(I) Tennessee must file revised tariff sheets at least 30 days but not more than 60 days prior to placing the proposed facilities into service, reflecting the incremental service and revised rates for EQT as discussed in the body of this order.

(J) Tennessee's request for a predetermination supporting rolled-in rate treatment for the costs with the Replacement Component in its next general NGA section 4 rate proceeding is granted, absent a significant change in material circumstances, as discussed in the body of this order.

(K) Tennessee shall file its negotiated rate agreements or numbered tariff sheets, not less than 30 days and not more than 60 days, prior to the commencement of service on the project for each shipper paying a negotiated rate with the following information:

- (a) the exact legal name of the shipper;
- (b) the total charges (the negotiated rate and all applicable charges);
- (c) the receipt and delivery points;
- (d) the volumes of gas to be transported;
- (e) the applicable rate schedule for the service; and

- (f) 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.

(L) Tennessee is also directed to disclose all consideration linked to the agreements, and 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 case.

(M) Tennessee shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if Tennessee determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent upon Gas Plant in Service, such as Income Taxes, Depreciation Expense, Return, and Interest Expense, and file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates. Tennessee and its representations made with respect to AFUDC accruals are subject to audit to determine whether they are in compliance with the revised policy and related Commission rules and regulations.

(N) Tennessee shall adhere to the accounting requirements discussed in the body of the order.

- (O) The motions to intervene out of time and motion to file answer are granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

1. Tennessee Gas Pipeline Company (Tennessee) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall 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**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include the Milliken and Leonard Variations as described in sections 3.4.3 and 3.4.4 of the EA, respectively. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by 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.

Tennessee'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. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Tennessee's Erosion Construction Plan (ECP) 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 before construction begins,** Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per loop segment and aboveground facility site, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training sessions;
 - f. the company personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Tennessee shall employ a team of EIs to sufficiently monitor construction of the project facilities. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or 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.
8. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports 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. an update on Tennessee'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 EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of project facilities in each state**, Tennessee shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof) in each respective state.
10. Tennessee must receive written authorization from the Director of OEP **before placing** each element of the project **into service**. Such authorization will 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.
11. **Within 30 days of placing the authorized 300 Line facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Tennessee shall file with the Secretary for the review and written approval of the Director of OEP a revised ECP that excludes the proposed modifications to the FERC Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures as identified in table 1.7.1-1 of the EA.
13. **Within 30 days of placing the facilities in service**, Tennessee shall file a report with the Secretary identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall also include a discussion of any other complaints concerning well yield or water quality and how each problem was resolved.
14. Tennessee shall **not begin construction of Loop 325** until:
 - a. Tennessee has consulted with the New Jersey Field Office of the U.S. Fish and Wildlife Service (FWS), Wallkill River National Wildlife Refuge (WRNWR) staff, and New Jersey Department of Environmental Protection (NJDEP) regarding survey methods for the dwarf wedgemussel, and completed and submitted to the FWS, WRNWR, NJDEP, and FERC staff the results of the survey;
 - b. the FERC staff completes any necessary section 7 consultation with the FWS; and
 - c. Tennessee has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
15. **Prior to construction of Loop 319**, Tennessee shall file with the Secretary a revised site-specific plan for wetland 319W010 following consultation with the Natural Resource Conservation Service, the North Branch Land Trust (NBLT), and the property owner. The site-specific plan shall document special considerations and agreements reached as a result of Tennessee's consultation regarding the proposed construction activities on Wetland Reserve Program lands and/or the NBLT conservation easement within or adjacent to wetland 319W010.

16. **Prior to construction**, Tennessee shall file with the Secretary for the review and written approval of the Director of OEP the information in accordance with Environmental Condition 5 concerning the temporary and permanent access roads listed as “TBD” in appendix D of the EA. In addition, Tennessee shall not construct, modify, or utilize proposed Access Road No. 13 near milepost 20.6 of Loop 321 (as depicted on alignment sheet TE-T10-300-2-56C filed with the Commission on July 17, 2009).
17. **Prior to construction**, Tennessee shall file with the Secretary for the review and written approval of the Director of OEP evidence of landowner concurrence with the site-specific residential construction plans for all locations where construction work areas would be within 10 feet of a residence unless the construction work areas is part of the existing permanent right-of-way.
18. **Prior to construction on the recreational and special interest areas listed below**, Tennessee shall file with the Secretary final construction/restoration plans for each area. Tennessee shall develop these plans in consultation with the appropriate land management agency and shall provide any agency comments on Tennessee’s plans. These plans shall include construction timing windows and special construction methods (e.g., reduced right-of-way), and shall clearly show the boundaries of the special interest areas and any associated facilities or unique features.
 - a. Susquehannock State Forest;
 - b. Wayne County Park;
 - c. State Game Land 116;
 - d. Delaware State Forest;
 - e. Hamburg Mountain Wildlife Management Area;
 - f. Wawayanda State Park; and
 - g. Bearfort Mountain Natural Area
19. **Prior to construction**, Tennessee shall file with the Secretary for review and approval by the Director of the OEP visual screening plans for the pig launcher/receiver sites located along Loops 315, 317, 319, and 321. These plans shall, at a minimum, show the locations of facility components, roads, and parking areas, and included a description of the types and quantities of vegetation to be replanted.
20. Tennessee **shall not begin construction** of facilities, including the pipeline loops and compressor stations, and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Tennessee files with the Secretary the following:

- (1) cultural resources survey report(s) for any previously unreported areas;
 - (2) supplemental information on Sites 36-TI-0142 and 36-SQ-0125;
 - (3) site evaluation reports as required, including Sites 36-BR-0268, and 36-WY-0153;
 - (4) viewshed analyses for Compressor Stations 303 and 310, and eight aboveground facilities (mainline valves, pig launchers and receivers);
 - (5) addendum report for the WRNWR and documentation of consultation with the FWS pertaining to the cultural resource survey and any comments on the addendum report for the refuge;
 - (6) archaeological site avoidance plans;
 - (7) comments on the cultural resource reports and plans from the Pennsylvania State Historic Preservation Office (SHPO) and New Jersey SHPO; and
 - (8) record of consultation with the Morris County Trust for Historic Preservation and the Delaware Nation of Oklahoma;
- b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. the staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Tennessee in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**”

21. Tennessee shall file noise surveys with the Secretary **no later than 60 days** after placing Compressor Stations 303 and 310, and the authorized units at the Compressor Stations 313, 315, 321, and 325, in service. If the noise attributable to the operation of all of the equipment at the identified compressor stations at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at the nearby noise sensitive areas, Tennessee shall install additional noise controls to meet the level **within 1 year** of each stations in-service date. Tennessee shall confirm compliance with the above requirement by filing a second set of noise surveys with the Secretary **no later than 60 days** after it installs the additional noise controls.
22. Tennessee shall incorporate the Milliken Variation near milepost 1.0 into the proposed route for Loop 323 (as depicted on drawing TE-T10-300-2-59-SS-01 included in its November 2, 2009, filing).

23. Tennessee shall incorporate the Leonard Option 2 route variation near milepost 11.8 into the proposed route for Loop 323 (as depicted on drawing TE-T10-300-2-61A-RP-03B included in its January 15, 2010, filing) and complete any necessary surveys and associated agency consultations associated with the revised construction workspace.