

146 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Texas Eastern Transmission, LP

Docket No. CP13-84-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 11, 2014)

1. On February 27, 2013, Texas Eastern Transmission, LP (Texas Eastern) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate its proposed Texas Eastern Appalachia to Market 2014 Project (TEAM 2014 Project). The proposed project consists of 33.6 miles of pipeline loop and compression station upgrades designed to provide bidirectional flow along Texas Eastern's facilities and a total of 600,000 dekatherms per day (Dth/day) of additional incremental transportation service to markets in the Northeast, Midwest, Southeast, and Gulf Coast. Texas Eastern also requests authorization pursuant to section 7(b) of the NGA to abandon seven compressor units in place at its Delmont Compressor Station.

2. For the reasons discussed below, the Commission grants Texas Eastern's requested certificate and abandonment authorizations, subject to certain conditions.

**I. Background and Proposal**

3. Texas Eastern is a natural gas company engaged in the transportation of natural gas in interstate commerce, subject to the Commission's NGA jurisdiction.<sup>2</sup> Texas Eastern's transmission system extends from Texas, Louisiana, and the Gulf of Mexico, through the States of Alabama, Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

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<sup>1</sup> 15 U.S.C. §§ 717f(b) and 717f(c) (2012).

<sup>2</sup> 15 U.S.C. § 717a(d)(6) (2012).

4. Texas Eastern runs a mainline system from Clarington, Ohio, to Uniontown, Pennsylvania. At Uniontown, Pennsylvania, Texas Eastern's mainline divides into two separate pipeline systems: the Penn-Jersey system to the north and the Capacity Restoration Project (CRP) system to the south. The systems run parallel to one another through southern Pennsylvania, but are located about 20 to 40 miles apart. The Penn-Jersey and CRP systems rejoin into a single mainline system at Texas Eastern's compressor station in Lambertville, New Jersey.

5. Through its TEAM 2014 Project, Texas Eastern proposes to expand the capacity of the northern Penn-Jersey system to transport additional supplies of natural gas from the Appalachian supply region to markets in the Northeast, Midwest, Southeast, and Gulf Coast. Specifically, Texas Eastern proposes to construct pipeline looping and aboveground modifications located on various segments of its system in Pennsylvania, West Virginia, Ohio, Kentucky, Tennessee, Alabama, and Mississippi. The TEAM 2014 Project will provide bidirectional flow on Texas Eastern's system and enable Texas Eastern to provide a total of 600,000 Dth/day of incremental transportation service on a firm basis: 300,000 Dth/day from western Pennsylvania to the eastern end of the system in Lambertville, New Jersey, and Staten Island, New York; 50,000 Dth/day from western Pennsylvania to the Lebanon, Ohio hub; and 250,000 Dth/day from western Pennsylvania to markets in Texas Eastern's Zones ELA and WLA in the Access Area on the southern part of its system.

**A. Facilities**

6. To provide additional capacity and bidirectional flow along its Penn-Jersey system, Texas Eastern proposes to construct approximately 33.6 miles of new 36-inch diameter pipeline loop and related aboveground facilities, upgrade certain compressor stations, abandon certain compressor units, and modify facilities.

7. Specifically, Texas Eastern proposes to construct the following pipeline facilities:

- 6.7 miles of new 36-inch-diameter pipeline loop in Fayette County, Pennsylvania, downstream of Texas Eastern's existing Holbrook Compressor Station;
- 8.1 miles total of new 36-inch-diameter pipeline loop in two segments (a 2.7-mile segment and a 5.4-mile segment) in Perry County, Pennsylvania, downstream of Texas Eastern's existing Perulack Compressor Station;
- 7.1 miles of new 36-inch-diameter pipeline loop in Dauphin County, Pennsylvania, downstream of Texas Eastern's existing Shermans Dale Compressor Station;

- 6.1 miles total of new 36-inch-diameter pipeline loop in two segments (a 2.3-mile segment and a 3.8-mile segment) in Lebanon County, Pennsylvania, downstream of Texas Eastern's existing Grantville Compressor Station; and
- 5.6 miles of new 36-inch-diameter pipeline loop in Berks County, Pennsylvania, downstream of Texas Eastern's existing Bernville Compressor Station in Berks County, Pennsylvania.

In addition, the TEAM 2014 Project would involve the following compressor station modifications:

- uprate of one existing 16,000 horsepower (HP) electric unit to 20,000 HP (by removing the software restriction currently in place in order to allow the unit to operate at its full service factor) and uprate of two existing 12,250 HP units to 13,300 HP each (by exchanging existing engines for new engines capable of greater horsepower) at Texas Eastern's existing Uniontown Compressor Station in Fayette County, Pennsylvania;
- installation of one new 26,000 HP gas turbine compressor unit and one new 26,000 HP electric motor-driven compressor unit at Texas Eastern's existing Delmont Compressor Station in Westmoreland County, Pennsylvania;
- abandonment in place of one existing 18,500 HP gas turbine compressor unit and four 2,000 HP reciprocating gas compressor units for a total abandonment of 26,500 HP at the Delmont Compressor Station in Westmoreland County, Pennsylvania;<sup>3</sup>
- installation of one new 18,100 HP gas turbine compressor unit at Texas Eastern's existing Armagh Compressor Station in Indiana County, Pennsylvania;
- installation of one new 26,000 HP gas turbine compressor unit at Texas Eastern's existing Entriiken Compressor Station in Huntingdon County, Pennsylvania; and

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<sup>3</sup> On October 30, 2013, Texas Eastern filed a supplement to its application, proposing to abandon four 2,000 HP reciprocating gas compressor units at the Delmont Compressor Station instead of six 1,100 HP units as originally proposed. While the EA prepared for this project evaluated the original proposal, the change in the compression facilities to be abandoned does not affect the conclusions reached in that document.

- installation of associated facilities, such as aero assemblies and cooling equipment, on existing gas compressor units at the Delmont, Uniontown, Armagh, and Entriken Compressor Stations.

8. The compressor stations modifications would result in a net certificated increase of 75,000 horsepower (HP). As a result of the net increase in horsepower, the total certificated horsepower at each station would be: 80,900 HP at the Uniontown Compressor Station; 71,900 HP at the Delmont Compressor Station; 40,100 HP at the Armagh Compressor Station; and 48,000 HP at the Entriken Compressor Station.<sup>4</sup>

9. In addition, Texas Eastern proposes to install associated facilities, such as launchers, receivers, and valves to support the pipeline expansion, as well as minor modifications and maintenance work at 41 existing facility sites along Texas Eastern's transmission system between Pennsylvania and Mississippi to allow for bidirectional flow on Texas Eastern's system.

## **B. Rates**

10. Texas Eastern states that the estimated cost of the TEAM 2014 Project is \$519,736,638. Texas Eastern proposes to establish initial incremental recourse rates under Rate Schedule FT-1 for firm service using the incremental capacity created by the project facilities. Texas Eastern does not propose to separately track interruptible service using the expansion facilities; rather, it states that it will charge its system interruptible transportation rates for all interruptible throughput on the parts of its system on which capacity is increased by the project facilities, consistent with the rate design approved by

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<sup>4</sup> Texas Eastern did not evaluate the technical feasibility and commercial viability of installing and operating waste heat recovery facilities in conjunction with its proposed modifications at compression stations, as discussed in the Interstate Natural Gas Association of America White Paper entitled "*Waste Energy Recovery Opportunities for Interstate Natural Gas Pipelines*" issued in February 2008 (INGAA White Paper). Since the uprating of compressor units at Texas Eastern's existing Uniontown Compressor Station, and the installation of new gas turbine compressors at the Delmont, Armagh, and Entriken Compressor Stations will meet the required threshold of total gas turbine station capacity of at least 15,000 HP and Texas Eastern has not addressed the economic viability of waste heat recovery at these locations we remind Texas Eastern to monitor the compressor stations, and should any of the stations meet the waste heat recovery parameters in the INGAA White Paper, Texas Eastern should post such information on its electronic bulletin board.

the Commission for various other Texas Eastern incremental projects in the Northeast market area.<sup>5</sup>

11. Texas Eastern proposes to recover incremental fuel use and lost and unaccounted for gas, as well as incremental electric power costs associated with providing firm service on the TEAM 2014 Project facilities, through incremental Applicable Shrinkage Adjustment percentages and incremental Electric Power Cost rates, and to track changes in fuel and electric power costs for incremental services on an incremental basis through its Applicable Shrinkage Adjustment and its Electric Power Cost Adjustment mechanisms set forth in its General Terms and Conditions (GT&C).

### C. Open Season

12. Prior to holding its open season for the project, Texas Eastern executed two binding precedent agreements with Chevron U.S.A., Inc. (Chevron) and EQT Energy, LLC (EQT) for transportation service on the TEAM 2014 Project totaling 600,000 Dth/day, with a target in-service date of November 1, 2014, and a primary term of 10 years, with a one-time option of five (5) additional years. Texas Eastern conducted a binding open season from January 17 through February 17, 2012, to gauge whether additional demand for firm service existed between receipt points in Clarington, Ohio and Lambertville, New Jersey. Texas Eastern requested bids for up to an overall potential capacity of 1,400,000 Dth/day, inclusive of the existing commitments from the two original shippers. The open season notice described the design of the proposed project to accommodate a primary firm path for all shippers to be split, with 50 percent of the firm path to extend to the east and 50 percent of the firm path to extend to the west and south from the Appalachian supply region.<sup>6</sup> The notice described proposed receipt and delivery points, zones, and potential capacity. No additional precedent agreements resulted from the open season.

13. From March 12, 2012, through March 30, 2012, Texas Eastern held a reverse open season to solicit turn-back capacity. Texas Eastern indicated in its reverse open season notice it was only seeking capacity that would reduce the scope of the TEAM 2014

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<sup>5</sup> Texas Eastern cites *Texas Eastern Transmission, LP*, 137 FERC ¶ 61,140 (2011); *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009); *Texas Eastern Transmission, LP*, 119 FERC ¶ 61,258 (2007); and *Texas Eastern Transmission, LP*, 99 FERC ¶ 61,383 (2002), *order denying reh'g and granting clarification*, 101 FERC ¶ 61,046 (2002).

<sup>6</sup> See Application at Exhibit Z-1(a).

Project's proposed incremental facilities. Looking to appropriately scope and design the facilities necessary for its contemplated TEAM 2014 Project, Texas Eastern stated that it would only consider turn-back requests offering to release capacity on Texas Eastern's facilities at the receipt and delivery points designated for the Team 2014 Project.<sup>7</sup>

14. In response to the reverse open season notice, Texas Eastern received turn-back requests from three firm shippers to release capacity on Texas Eastern's facilities that move gas to the east.<sup>8</sup> Texas Eastern states that it evaluated the turn-back requests to determine which portions of the three shippers' paths offered for turn-back would result in the greatest decrease in the scope of TEAM 2014 Project construction and allow Texas Eastern to satisfy its contractual obligations with the TEAM 2014 shippers. Texas Eastern accepted all of the capacity offered for turn-back by one shipper and portions of the capacity offered for turn-back by the two other shippers, including some of the capacity offered for turn back by ConocoPhillips Company (ConocoPhillips).

## **II. Procedural Matters**

### **A. Notice, Interventions, Comments, and Protest**

15. Notice of Texas Eastern's application in Docket No. CP13-84-000 was published in the *Federal Register* on March 21, 2013 (78 Fed. Reg. 17,389), establishing April 5, 2013, as the due date for comments and motions to intervene. The parties listed in Appendix A filed timely, unopposed motions to intervene.<sup>9</sup> On April 12, 2013, Elizabethtown Gas filed a late motion to intervene. On May 17, 2013, Karen Feridun filed a late motion to intervene and comments on the project. Elizabethtown Gas and Karen Feridun have demonstrated an interest in the proceeding and have shown that their participation will not delay, disrupt, or unfairly prejudice any other parties to the proceeding. Accordingly, we grant Elizabethtown Gas' and Karen Feridun's late motions to intervene and accept Karen Feridun's comments.<sup>10</sup>

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<sup>7</sup> See Application at Exhibit Z-1(b).

<sup>8</sup> Texas Eastern did not receive any turn-back request or combination of requests that would have reduced the scope of the project facilities needed to deliver gas to the south or west of the western Pennsylvania receipt points.

<sup>9</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. See 18 C.F.R. § 385.214 (2013).

<sup>10</sup> 18 C.F.R. § 385.214(d) (2013).

16. The Clean Air Council, the Delaware Riverkeeper Network, the Municipal Defense Group, Cheryl Auchenbach, Herbert R. Greider, Sr., and the Lebanon County Planning Department filed comments in response to the public notice. In addition, Chevron, EQT, and The National Grid Delivery Companies (National Grid) filed comments in support of Texas Eastern's proposed TEAM 2014 Project stating the project is needed to provide additional pipeline capacity for moving Appalachian gas supplies to the New York market area.

17. On April 5, 2013, ConocoPhillips, an existing firm shipper on Texas Eastern's mainline system, filed a protest to Texas Eastern's TEAM 2014 Project application. ConocoPhillips states that Texas Eastern failed to comply with the Commission's policies in the routing and sizing of the eastern expansion that is part of the proposed TEAM 2014 Project. Specifically, ConocoPhillips alleges that Texas Eastern chose to expand the northern Penn-Jersey system in order to avoid accepting ConocoPhillips' offer to turn back capacity on the parallel southern CRP system. ConocoPhillips further asserts expansion of the southern CRP system would be environmentally and economically preferable to expansion of the northern Penn-Jersey system.

18. On April 22, 2013, Texas Eastern filed an answer to ConocoPhillips' protest and the comments filed by the Clean Air Council, the Delaware Riverkeeper Network, and the Municipal Defense Group. Subsequently, motions for leave to answer and answers were filed by ConocoPhillips on May 7, 2013, and by Texas Eastern on May 23, 2013. In addition, on November 7, 2013, ConocoPhillips filed comments on privileged information related to the TEAM 2014 Project's precedent agreements.<sup>11</sup> On November 12, 2013, Texas Eastern filed a motion for leave to answer and answer to ConocoPhillips' November 7, 2013 comments. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers,<sup>12</sup> our rules do provide that we may, for good cause, waive this provision.<sup>13</sup> We will accept all the above-described responsive pleadings because they have provided information that assisted us in our decision-making process.

19. On January 28, 2014, ConocoPhillips filed a pleading styled as an amendment to its protest and request for revised remedy. In it, ConocoPhillips states that it has been

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<sup>11</sup> See *Texas Eastern Transmission, LP*, 145 FERC ¶ 61,027 (2013) (order requiring Texas Eastern to enter into a protective agreement with ConocoPhillips and to provide ConocoPhillips with a copy of the requested non-public precedent agreements).

<sup>12</sup> 18 C.F.R. § 385.213(a)(2) (2013).

<sup>13</sup> 18 C.F.R. § 385.101(e) (2013).

able to release its existing firm capacity on Texas Eastern's system to third parties. ConocoPhillips still seeks a finding by the Commission that Texas Eastern violated the Commission's policies regarding the conduct of reverse open seasons by refusing to accept all of the capacity that ConocoPhillips sought to turn back. However, ConocoPhillips states that as a result of its success in finding third parties to whom it can release its firm capacity, the revised remedy it now seeks is for the Commission to require that Texas Eastern make ConocoPhillips whole by paying it restitution of \$5,171,070. ConocoPhillips states that amount is the difference between the reservation charges it will still have to pay Texas Eastern after the scheduled November 1, 2014 in-service date for the TEAM 2014 Project and the credits ConocoPhillips will receive from Texas Eastern as a result of the payments to Texas Eastern from the shippers that are taking ConocoPhillips' released capacity.

20. All comments concerning environmental issues were addressed in the Environmental Assessment (EA) prepared for the proposed project and are discussed in that document. The other issues raised by the Clean Air Council, the Delaware Riverkeeper Network, the Municipal Defense Group, and ConocoPhillips are addressed below.

#### **B. Request for Formal Hearing**

21. ConocoPhillips requests that the Commission hold a formal hearing in this proceeding. The Commission has substantial discretion in deciding whether to hold a trial-type evidentiary hearing and requires such hearings only where there are material issues of fact that cannot be resolved on the basis of the written record.<sup>14</sup>

22. ConocoPhillips requests that the Commission establish a full evidentiary hearing to determine whether: (1) the TEAM 2014 Project route proposed by Texas Eastern on the Penn-Jersey system or one of the two alternate routes proposed by ConocoPhillips on the CRP system is more economically and environmentally advantageous; and (2) whether Texas Eastern complied with the Commission's reverse open season policies.<sup>15</sup> All interested parties have been afforded a full and complete opportunity to

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<sup>14</sup> See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970-71 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

<sup>15</sup> On October 1, 2012, after Commission staff granted Texas Eastern's request to utilize the Pre-Filing Process in Docket No. PF12-19-000 for the TEAM 2014 Project, ConocoPhillips filed a complaint and request for an evidentiary, trial-type hearing against Texas Eastern in Docket No. RP13-128-000, claiming that Texas Eastern's planned

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present their views to the Commission through written submissions, and we find that there is no material issue of fact that we cannot resolve on the basis of the existing written record in this proceeding. Therefore, we will deny the request for a trial-type hearing.

### **III. Discussion**

23. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the abandonment, construction and operation of the facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.<sup>16</sup>

#### **A. Application of the Certificate Policy Statement**

24. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>17</sup> 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 explained that in deciding whether to authorize the construction of major new natural gas 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.

25. Under this policy, the threshold requirement for an applicant proposing new projects is that the applicant must be prepared to financially support the project 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

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expansion of the Penn-Jersey system would result in unnecessary construction costs and unnecessary disruption to the environment. The Commission dismissed the complaint and request, without prejudice, as premature. *See ConocoPhillips Co. v. Texas Eastern Transmission, LP*, 141 FERC ¶ 61,071 (2012), *reh'g denied*, 142 FERC ¶ 61,123 (2013).

<sup>16</sup> 15 U.S.C. §§ 717f(b) and 717f(c) (2012).

<sup>17</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the proposed project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

### **1. No-Subsidy Requirement**

26. As indicated above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. While Texas Eastern has agreed to negotiated rates in its precedent agreements with the TEAM 2014 Project shippers, Texas Eastern proposes an initial incremental recourse rate for firm project service, which is higher than Texas Eastern's existing rates for service.

27. In its protest, ConocoPhillips contends that the TEAM 2014 Project violates the requirement that a project not adversely impact existing customers because Texas Eastern could create sufficient additional capacity to satisfy the TEAM 2014 Project shippers at less cost by increasing capacity on the southern CRP system, rather than on the northern Penn-Jersey system, as proposed. ConocoPhillips asserts that Texas Eastern's proposal could result in existing customers being forced to pay for stranded costs.<sup>18</sup>

28. We disagree that the proposal violates the no-adverse-impact provisions of the Certificate Policy Statement. As discussed below, we are approving Texas Eastern's proposed incremental recourse rates for service utilizing the capacity created by the TEAM 2014 Project. This ensures that existing customers will not subsidize the expansion.

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<sup>18</sup> ConocoPhillips' April 5, 2013 Protest at 29. ConocoPhillips states that the TEAM 2014 Project will add an additional \$280 million to Texas Eastern's rate base, an increase that could be greatly reduced if Texas Eastern chose to accept its turn-back capacity and expand the parallel southern CRP system, rather than expand the Penn-Jersey system.

## 2. Turn-back Capacity Requirement and Project Route

29. After executing two precedent agreements with Chevron and EQT, Texas Eastern held an open season from January 17 through February 17, 2012, to gauge whether there was additional demand for firm service between Clarington, Ohio and Lambertville, New Jersey. No new precedent agreements resulted from the open season.

30. In March 2012, Texas Eastern held a reverse open season to solicit turn-back capacity to assess the potential for reducing the scope of the contemplated TEAM 2014 Project facilities. In its notice, Texas Eastern specified that the turn-back capacity offers must release capacity on Texas Eastern's facilities at proposed receipt and delivery points designated for the Team 2014 Project and must not release any capacity unnecessary for the contemplated project.<sup>19</sup>

31. In response to the reverse open season, ConocoPhillips offered to turn back 395,000 Dth/day of firm capacity, primarily along the southern CRP system.<sup>20</sup> On April 20, 2012, Texas Eastern accepted ConocoPhillips' offer to turn back 112,500 Dth/day of capacity between Clarington, Ohio, and Uniontown, Pennsylvania. Texas Eastern did not accept the capacity that ConocoPhillips offered to turn back east of Uniontown, Pennsylvania, because "the portion of the project extending in an easterly direction (from Uniontown, Pennsylvania) will involve an expansion of Texas Eastern's Penn-Jersey systems" and the "remainder of ConocoPhillips' primary path does not follow the expansion path for the project."<sup>21</sup>

### ConocoPhillips' Protest

32. In its protest, ConocoPhillips asserts that the TEAM 2014 Project "fails to comply with the Commission's construction and reverse open-season policies and precedent in

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<sup>19</sup> See Application at Exhibit Z-1(b).

<sup>20</sup> On November 21, 2009, the Commission granted Texas Eastern a certificate authorizing an expansion project which included, *inter alia*, the addition of compression facilities to increase the capacity of its southern CRP system in order to provide an additional 455,000 Dth/day service for several shippers. One of those shippers was ConocoPhillips, which had entered into a precedent agreement for 395,000 Dth/day of firm transportation service on the expansion for an initial primary term of 13 years. *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009).

<sup>21</sup> ConocoPhillips' April 5, 2013 Protest at Exhibit C and 11-12.

the context of routing and sizing of the proposed expansion.”<sup>22</sup> ConocoPhillips emphasizes that the purpose of the Commission’s reverse open-season requirement is to “promote proper sizing of new facilities, mitigate the potential of overbuilding, avoid disruption to the environment, and avoid unneeded exercise of eminent domain.”<sup>23</sup> ConocoPhillips states that the precedent agreements for service to be satisfied by the TEAM 2014 Project do not specify a route for the transportation of shippers’ volumes on Texas Eastern’s system between Uniontown, Pennsylvania, and Lambertville, New Jersey.<sup>24</sup> Arguing the TEAM 2014 Project’s expansion shippers’ volumes can be transported on Texas Eastern’s system between Uniontown, Pennsylvania, and Lambertville, New Jersey, on either the northern Penn-Jersey path or the southern CRP system, ConocoPhillips asserts that Texas Eastern should have agreed to accept offers by existing shippers to turn back capacity on the southern CRP path during the reverse open season. ConocoPhillips states its firm service agreement with Texas Eastern is for service on the southern CRP system that is sufficiently similar in location, term, and price to the incremental service that Texas Eastern is planning to provide for the TEAM 2014 Project expansion shippers by increasing capacity on the Penn-Jersey system that Texas Eastern should be required to accept the capacity ConocoPhillips has offered to turn back on the southern CRP system. ConocoPhillips alleges that Texas Eastern chose to expand the northern Penn-Jersey system in order to avoid accepting ConocoPhillips’ offer to turn back capacity on the CRP system, on which an expansion incorporating the turn-back capacity would be environmentally and economically preferable to the proposed Penn-Jersey expansion.

33. By choosing to expand the Penn-Jersey system’s capacity and declining ConocoPhillips’ offer to turn back capacity on the CRP system, ConocoPhillips asserts that Texas Eastern is violating the Commission’s reverse open-season policies to properly size an expansion project. ConocoPhillips offers two alternatives to the TEAM 2014 Project incorporating ConocoPhillips’ 300,000 Dth/day of turn-back capacity that would utilize the CRP system, one involving a Delaware River crossing and another that would not involve a Delaware River crossing. ConocoPhillips asserts that both of its alternatives, which utilize the CRP system, would meet the purpose of the TEAM 2014 Project, be less costly, and result in fewer environmental impacts. ConocoPhillips requests that the Commission require Texas Eastern to take back the capacity associated

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<sup>22</sup> ConocoPhillips’ April 5, 2013 Protest at 2.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> ConocoPhillips’ November 7, 2013 Comments at 3-5.

with its 300,000 Dth/day of firm service along the CRP system in conjunction with expanding the capacity of the southern CRP system as part of the TEAM 2014 Project.

**Texas Eastern's Answer**

34. In response, Texas Eastern contends that it has complied with the Commission's reverse open-season policies. It explains that prior to issuing its reverse open season notice, it chose to expand the Penn-Jersey system because an expansion of the Penn-Jersey system could be completed by the in-service date of November 1, 2014 requested by Chevron and EQT, the only shippers that had entered into precedent agreements for the expansion capacity to be created by the TEAM 2014 Project and because Chevron and EQT had requested no new receipt or delivery points, or additional capacity at existing receipt or delivery points, on the CRP system.

35. Texas Eastern states that it evaluated the turn-back requests by ConocoPhillips and two other firm shippers during the reverse open season to determine which offers would result in the greatest decrease in the scope of construction of the contemplated project. Texas Eastern informed the other shipper that it would accept all of the turn-back capacity offered by one shipper and portions of the capacity turn-back offers by ConocoPhillips and the third shipper.<sup>25</sup> Texas Eastern acknowledges that the turn-back offer accepted in its entirety is for capacity on the CRP system, on which ConocoPhillips also seeks to turn back capacity. However, Texas Eastern explains it accepted the other shipper's offer to turn back capacity on the CRP system while rejecting ConocoPhillips' offer to turn back CRP capacity because that offer was for capacity extending along the entire path of the CRP system to the ultimate delivery points requested by the TEAM 2014 Project expansion shippers; thus, there would be no need for Texas Eastern to construct any additional facilities on the CRP system to accommodate acceptance of that turn-back offer. The capacity offered by ConocoPhillips, on the other hand, did not extend to the ultimate delivery points specified by the expansion shippers.<sup>26</sup>

36. Texas Eastern states that it considered, on its own, two alternatives to expanding the Penn-Jersey system that involved an expansion of the CRP system, one with a Delaware River crossing and one without. Texas Eastern determined that the CRP expansion alternative involving the Delaware River crossing had a similar cost to its

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<sup>25</sup> Texas Eastern made an offer to accept ConocoPhillips' turn-back capacity between Clarington, Ohio, and Uniontown, Pennsylvania. However, ConocoPhillips did not accept Texas Eastern's offer to accept only a portion of the capacity it was seeking to turn back.

<sup>26</sup> Texas Eastern's April 22, 2013 Answer at 20 n.50.

proposed expansion; however, that alternative involved additional permitting and greenfield construction, and thus could not be completed by the expansion shippers' requested in-service date. The CRP expansion alternative that did not require a Delaware River crossing would involve a greenfield crossover pipeline from the CRP system to the Penn-Jersey system, which Texas Eastern contends would result in economic waste and additional cost.

37. Texas Eastern further states that it would be contrary to Commission precedent to require expansion of the CRP system because the Commission has held that "a company has discretion under the NGA to design and propose projects that satisfy the pipeline's business objectives," and that a pipeline "cannot be compelled to build a project different from the one that the pipeline has proposed to build."<sup>27</sup>

### Commission Response

38. In addition to requiring that pipeline companies planning to file applications for expansion projects conduct open seasons to solicit bids for capacity from all potential shippers to assess how much additional pipeline capacity is needed, the Commission requires that pipeline companies also solicit turn-back capacity from firm shippers willing to relinquish some or all of their contracted capacity that could meet the additional demands for service. This turn-back solicitation policy was first established in the 1995 Pricing Policy Statement<sup>28</sup> to provide guidance on how, going forward, interstate pipelines would be permitted to recover the costs of new construction. Having established a presumption favoring rolled-in rate treatment when the rate effect on existing customers would not be substantial,<sup>29</sup> solicitation of turn-back capacity was viewed as a means of ensuring the proper sizing of expansion projects to avoid unnecessary project costs and rate impacts on pipelines' customers.<sup>30</sup>

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<sup>27</sup> Texas Eastern's April 22, 2013 Answer at 9-10 (citing *Panhandle Eastern Pipe Line Co. v. FPC*, 204 F.2d 675, 680 (3d Cir. 1953); *Tennessee Gas Pipeline Co. v. Columbia Gulf Transmission Co.*, 113 FERC ¶ 61,200, at PP 25-30 (2005); and *El Paso Natural Gas Co., et al.*, 104 FERC ¶ 61,045, at P 104 n.104 (2003).

<sup>28</sup> *Pricing Policy for New and Existing Facilities Constructed By Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 (1995) (*Pricing Policy Statement*).

<sup>29</sup> *Id.* at 61,915.

<sup>30</sup> *Id.* at 61,917.

39. Recognition that the capacity that existing firm shippers are willing to turn back should be taken into account in determining the proper sizing for new facilities was carried over when the Commission adopted its 1999 Certificate Policy Statement.<sup>31</sup> The Commission explained in that proceeding:

The Commission has a two-step process for determining whether the market finds an expansion project economically viable. The first step, which occurs prior to the certificate application, is for the pipeline to conduct an open season in which the existing customers are given an opportunity to permanently relinquish their capacity. The first step ensures that a pipeline will not expand capacity if the demand for that capacity can be filled by existing shippers relinquishing their capacity.<sup>32</sup>

40. However, the Commission has never held that a pipeline must, or necessarily even should, design expansion projects to maximize the amount of capacity that existing shippers can turn back. The interstate pipeline grid is a complex, dynamic system. While we require pipelines to investigate the potential for incorporating existing capacity into new expansion projects in order to encourage the proper sizing of facilities and minimize disruption of the environment, that is not the same as requiring pipelines to give primacy to an existing customer's desire to relinquish capacity (which capacity might have been designed and constructed to serve that customer's particular needs) in the design of an expansion intended to serve a new customer. Indeed, the Commission believes a policy imposing such a requirement could disserve the public interest by discouraging the development of needed gas infrastructure.<sup>33</sup> Therefore, the Commission finds no fault in Texas Eastern's stating in its reverse open season held from March 12 through March 30,

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<sup>31</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 (1999), *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

<sup>32</sup> Certificate Policy Statement, 90 FERC ¶ 61,128 at 61,392, *citing Pricing Policy Statement*, 71 FERC ¶ 61,241 at 61,917.

<sup>33</sup> In this instance, Texas Eastern states that approval of the project conditioned on use of ConocoPhillips' preferred route would result in new infrastructure *not* being constructed to transport additional gas supplies intended to serve new electric generation and other markets. Texas Eastern's April 22, 2013 Answer at 5-6. As is discussed below, Texas Eastern has stated that it will not go forward with TEAM 2014 Project if the Commission conditions its authorization to require acceptance of ConocoPhillips' turn back of CRP system capacity and expansion of that system instead of the Penn-Jersey system as proposed.

2012, that any offer to turn back capacity must result in available capacity on Texas Eastern's facilities from the receipt points on Texas Eastern's system to the delivery points on the Texas Eastern's system designated for the Team 2014 Project and not result in a release of any capacity unnecessary for the project.

41. Further, even if Texas Eastern acknowledged that the expansion shippers' needs could be met just as well by increasing capacity along ConocoPhillips' preferred CRP route, conditioning approval of Texas Eastern's expansion project on use of that route for the purpose of maximizing the amount of firm capacity that ConocoPhillips is allowed to turn back would not be supported by Commission precedent, which demonstrates a reluctance on the Commission's part to substitute its own judgment for pipeline companies' own business decisions on whether particular project alternatives would be cost-effective and timely options.<sup>34</sup> In any event, Texas Eastern has explained why it chose a project to increase capacity on the Penn-Jersey system, instead of its CRP system. It states an expansion of capacity on the Penn-Jersey system can be completed in time to meet the in-service date of November 1, 2014, listed in its open season notice and promised to the two expansion shippers that signed precedent agreements, whereas it determined during initial project development stages when it examined two alternatives that would increase expansion on the CRP system that neither CRP alternative was a viable option. It acknowledges that one of the CRP alternatives it examined would cost approximately the same as the proposed Penn-Jersey system expansion, but that alternative would include a crossing of the Delaware River and result in significant delays that would not allow Texas Eastern to meet its November 1, 2014 in-service date. It states the alternative scenario to increase capacity on the CRP system without a Delaware River crossing would result in much greater costs than both the CRP river-

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<sup>34</sup> Texas Eastern's reverse open season followed the Commission's policy and precedent regarding reverse open seasons. *See, e.g., PG&E Gas Transmission*, 84 FERC ¶ 61,204, at 62,001 (1998) (finding that the pipeline did not have to accept a turn-back of capacity from Kingsgate, British Columbia (at the US-Canada border) to Malin, Oregon when the expansion only involved a shorter path from Kingsgate to Stanfield, Oregon); *Columbia Gas Transmission Corp. and Texas Eastern Transmission Corp.*, 79 FERC ¶ 61,160, at 61,759 (1997) (noting that "[a] pipeline should not be required to take back its customers' unrelated, unwanted capacity simply because it wants to construct new facilities somewhere else on its system"). Texas Eastern and ConocoPhillips both cite to *PG&E Gas Transmission* and *Columbia Gas Transmission Corp. and Texas Eastern Transmission Corp.* to support their reverse open season arguments. We find that both cases support Texas Eastern's claim that it is not required to accept ConocoPhillips' take back request because it offered to release capacity on the CRP system that is unrelated to the TEAM 2014 Project as proposed.

crossing scenario and its proposal to increase capacity on the Penn-Jersey system. Thus, Texas Eastern has concluded expansion of the Penn-Jersey system is its most cost-effective and timely option. As stated above, we will not attempt to substitute our judgment for Texas Eastern's by conditioning approval of its expansion project on a change in route solely to increase the amount of firm capacity that ConocoPhillips would be able to turn back.

42. Texas Eastern is correct that Commission policy only requires pipeline companies planning expansion projects to consider and evaluate offers for turn-back capacity which is similar to the proposed expansion capacity in terms of location, term, and price.<sup>35</sup> Since Texas Eastern was not obligated to design its expansion project to maximize the amount of firm capacity that existing shippers would be allowed to turn back, we find no fault with Texas Eastern's rejecting ConocoPhillips' offer to turn back capacity that did not meet the location conditions for turn-back capacity specified by Texas Eastern in the reverse open season notice (the delivery points identified in Texas Eastern's reverse open season notice for the TEAM 2014 Project were on the Penn-Jersey system, not along the path of the capacity that ConocoPhillips offered to turn back on the CRP system). Thus, the CRP system capacity that ConocoPhillips wanted to turn back had no potential for reducing the scope of construction for the TEAM 2014 project Texas Eastern was designing, and Texas Eastern was not required to modify its project to accommodate ConocoPhillips' offer.

43. The requirement that a pipeline company solicit turn-back capacity on facilities before it files an application for construction authority to increase those facilities' capacity is not intended to be a means for shippers to insist upon alternative proposals that would enable such shippers to turn back capacity they no longer need, thereby ending their obligations under their service agreements to continue paying reservation charges for the capacity. Given that Texas Eastern has presented what we find to be a valid explanation for designing the TEAM 2014 Project as it did, we believe it would be particularly inappropriate in this case to condition approval of Texas Eastern's expansion project on its agreeing to increase capacity on the CRP system and allow ConocoPhillips to turn back its capacity on the CRP system, when it was less than five years ago that Texas Eastern undertook an expansion of the CRP system based on ConocoPhillips' entering into an agreement for 395,000 Dth/day of firm transportation service at an incremental rate.<sup>36</sup>

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<sup>35</sup> *PG&E Gas Transmission*, 84 FERC at 62,001 (citing *Columbia Gas Transmission Corp., et al.*, 79 FERC ¶ 61,160, at 61,759 (1997)).

<sup>36</sup> *See Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 at PP 3 and 34-35.

44. ConocoPhillips also argues that its preferred alternative route would be less expensive with less environmental disruption. However, we also reject those arguments as a basis for conditioning approval of Texas Eastern's expansion project on its agreeing to change its project in order to use the CRP route preferred by ConocoPhillips.

45. First, as discussed above, Texas Eastern states one of the alternatives examined to consider the feasibility of relocating the TEAM 2014 Project from the Penn-Jersey system to the CRP system would cost much more than its proposal to increase the Penn-Jersey system's capacity. Further, while Texas Eastern acknowledges that the other CRP alternative would cost approximately the same as its proposed Penn-Jersey system expansion, Texas Eastern states that it cannot choose that option and also meet the November 1, 2014 in-service date for which its expansion shippers are contracting because that alternative would involve a crossing of the Delaware River and resulting permitting delays. As discussed above, Commission precedent does not support substitution of our judgment for Texas Eastern's. Moreover, in any event, as discussed herein, we are approving incremental rate treatment for the proposed expansion capacity, and thus Texas Eastern and its expansion shippers; thus, Texas Eastern and its expansion shippers, not its existing shippers, will bear the costs of the project.

46. Further, aside from one limited exception,<sup>37</sup> the NGA does not give the Commission authority to direct the development of the gas industry's infrastructure either on a broad regional basis or in the design of specific projects. Thus, if the Commission were to condition approval of Texas Eastern's TEAM 2014 Project on its agreeing to use ConocoPhillips' alternative route, Texas Eastern could simply decide to abandon the expansion project altogether, and we could not require it to build on the alternative route. We respond when an application is presented to us, and in each application the applicant determines the parameters of the project. The route presented represents the applicant's proposal to build transmission capacity to serve certain markets. The Commission's certificate application process permits scrutiny of the proposed project, and the resulting certificate will also come to reflect public and government input on safety and security, cultural and environmental resources, and engineering and design.<sup>38</sup>

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<sup>37</sup> NGA section 7(a) provides that the Commission may direct a natural gas company to extend or improve its transportation facilities to service local distribution companies or the public immediately adjacent to the transportation facilities. 15 U.S.C. § 717f(a) (2012). We note, however, that the Commission has never taken action pursuant to this provision of the NGA.

<sup>38</sup> *Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043, at P 25 (2012).

47. In view of the above considerations, we reject ConocoPhillips' argument that an expansion project on the CRP system would be less expensive as a basis for conditioning approval of Texas Eastern's expansion project on its agreeing to change its project to use ConocoPhillips' preferred route and accept ConocoPhillips' turn back of its reserved firm capacity on the CRP system.<sup>39</sup>

48. Regarding ConocoPhillips' argument that capacity could be increased on the CRP system with less environmental disruption than expansion of the Penn-Jersey system's capacity, it would be a waste of resources and cause unnecessary delay to assess the potential environmental impacts of the alternative routes proposed by ConocoPhillips in light of the fact that ConocoPhillips has now released the capacity it was seeking to turn back to other shippers, thus precluding the incorporation of that capacity into an alternative project. Moreover, even if capacity were still available, Texas Eastern has made it clear that it will abandon its proposed project if its certificate were to require that it use that alternative. Texas Eastern states that a Commission order that nominally approves the TEAM 2014 Project but requires Texas Eastern to modify its project to increase capacity on the CRP system, instead of on the Penn-Jersey system, would have the same effect as the Commission rejecting Texas Eastern's TEAM 2014 Project altogether. This is because Texas Eastern would not be able to construct such a different project in time to meet the November 1, 2014 date agreed-upon for commencement of project service; thus, it would not go forward with the project. Commencement of the TEAM 2014 Project service has been timed to correspond with new production by the expansion shippers, which are competitors of ConocoPhillips, coming on line.<sup>40</sup>

49. Further, even if ConocoPhillips' capacity were still available and we agreed with ConocoPhillips that relocation of Texas Eastern's expansion project to ConocoPhillips' preferred route would be preferable environmentally, that would not necessarily cause us to either deny Texas Eastern's application for its TEAM 2014 Project or condition our approval of the project on Texas Eastern agreeing to modify the project to incorporate ConocoPhillips' preferred route. Under the NGA, we consider alternatives to a proposed project in determining whether a proposal is in the public interest. Under the National Environmental Policy Act (NEPA), we take a hard look at alternatives to fulfill the purpose and need for a proposed project and assess the potential environmental impacts of each alternative. If we find a proposed project to be environmentally unacceptable, we

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<sup>39</sup> Also, because we are finding that Texas Eastern conducted its reverse open season consistent with Commission policy, we also reject ConocoPhillips' request for monetary relief in ConocoPhillips' January 28, 2014 pleading.

<sup>40</sup> Texas Eastern's April 22, 2013 Answer at 5-6.

will reject the application unless we have identified modifications that would make the project environmentally acceptable and have reason to believe the applicant may be willing to agree to those modifications. If we find that a proposed project is environmentally acceptable, as proposed or with certain modification, we will approve it if other non-environmental considerations also support a finding that the proposed project is required by the public convenience and necessity.<sup>41</sup>

50. During the NEPA process, we frequently identify environmentally preferable alternatives, and may condition our authorization on the applicant's implementation of certain alternatives.<sup>42</sup> However, "it is well settled that NEPA does not mandate that agencies reach particular substantive results. Instead, NEPA simply sets forth procedures that agencies must follow to determine what the environmental impacts of a proposed action are likely to be. If an agency adequately identifies and evaluates adverse environmental effects of a proposed action, 'the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.'"<sup>43</sup>

51. As discussed below and in our Environmental Assessment, the Commission has evaluated the environmental impacts of Texas Eastern's proposed Penn-Jersey system expansion as well as alternatives that would expand the CRP system to meet the need for which TEAM 2014 Project was proposed. We determined that any adverse effects of the expansion of the Penn-Jersey system as proposed by Texas Eastern can be adequately mitigated and that the TEAM 2014 Project is required by public convenience and necessity.

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<sup>41</sup> See *Millennium Pipeline Company, L.L.C.*, 141 FERC ¶ 61,198, at P 44 (2012); *Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043, at P 26 (2012).

<sup>42</sup> See, e.g., *Gas Transmission Northwest, LLC*, 142 FERC ¶ 61,186, at P 22 (2013) (discussing route modifications in response to concerns regarding habitats for the Washington ground squirrel, native sagebrush-steppe and grassland). See also *Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043, at P 8 and n.7 (2012) (requiring specific construction methods and modifications to the applicants' proposed route in its proposed New York-New Jersey Expansion Project to minimize adverse impacts on railroads in response to railroad safety concerns).

<sup>43</sup> *KN Wattenberg Transmission Limited Liability Company*, 90 FERC ¶ 61,322, at 62,083 (2000) (citing and quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

52. In view of the above considerations, we reject ConocoPhillips' argument based on environmental grounds that we should condition approval of Texas Eastern's TEAM 2014 Project on its modifying the project to increase capacity on the CRP system rather than the Penn-Jersey system and accepting ConocoPhillips' turn back of its reserved firm capacity on the CRP system.<sup>44</sup>

### **3. Impact on Existing Customers, Pipelines, and Communities**

53. We also find that Texas Eastern's proposed TEAM 2014 Project will not cause degradation of Texas Eastern's services to its existing customers. Rather, the project will allow Texas Eastern to provide additional transportation services, without adversely affecting its ability to continue meeting its existing firm obligations. Additionally, there will be no adverse impact on existing pipelines in the region or their captive customers, because the incremental capacity to be created on Texas Eastern's system will be used to transport new production coming on line and the services using the expansion capacity therefore will not replace existing services on other pipeline systems. Thus, we find the proposed project will not result in any adverse impact on Texas Eastern's existing customers or other pipelines or their captive customers.

54. Texas Eastern's project will include the construction of the several segments of new 36-inch-diameter pipeline loop totaling approximately 33.6 miles of pipeline, the installation of related aboveground facilities, upgrades to several compressor stations, the abandonment of several compressor units, and modifications of other facilities. Regarding the potential impacts of these construction activities on landowners and communities along the route of the pipeline project, Texas Eastern states that it will, to the extent practicable, construct all project facilities utilizing existing rights-of-way and previously disturbed property to limit environmental disturbances. All of the compressor station modifications will be within the existing fence lines around the stations. In addition, all other aboveground facility modifications needed for the expansion and to enable bi-directional flow on a portion of Texas Eastern's system will take place within Texas Eastern's existing right-of-way, with the exception of one location that will require additional workspace to accommodate a permanent access road within Texas Eastern's property. Aside from the new permanent access road, no additional land use impacts will result from the construction or operation of modified facilities. To decrease emissions at compressor stations, Texas Eastern proposes to replace older, less efficient compressor units with more efficient and environmentally-friendly units. Accordingly, for purposes

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<sup>44</sup> Given our finding that Texas Eastern actions with respect to its reverse open season were consistent with Commission policy, we also reject ConocoPhillips' request for monetary relief in compensation for Texas Eastern's rejection of its offer of turn back.

of our consideration under the Certificate Policy Statement, we find that Texas Eastern has taken steps to minimize any adverse economic impacts to landowners, surrounding communities, and the environment.<sup>45</sup>

#### **4. Conclusion**

55. The TEAM 2014 Project will increase the transportation capacity available on Texas Eastern's system. All of the proposed capacity has been subscribed long-term, demonstrating the existence of a market for the project. Based on the benefits the project will provide and the minimal adverse effects the project will have on landowners and/or surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of Texas Eastern's TEAM 2014 Project proposal, as conditioned in this order.

#### **B. Abandonment**

56. Texas Eastern proposes to abandon certain compression facilities as part of the modification of its system to provide service for the TEAM 2014 Project without degrading service to existing shippers. Specifically, Texas Eastern proposes to abandon in place one 18,500 HP gas turbine compressor unit and four 2,000 HP reciprocating gas compressor units for a total abandonment of 26,500 HP at the Delmont Compressor Station in Westmoreland County, Pennsylvania, which it proposes to replace by installing one new 26,000 HP gas turbine compressor unit and one new 26,000 HP electric motor-driven compressor unit for a net increase of 25,500 HP at the Delmont Compressor Station.

57. The application shows that such abandonments are necessary components of the proposed project to achieve the proposed 600,000 Dth/day of incremental capacity by replacing older, less efficient compressor units with more efficient units that are also more environmentally friendly. Hence, we find that the proposed abandonment is permitted by the public convenience or necessity and approve the abandonment of facilities as described in this order and in the application.

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<sup>45</sup> Environmental concerns raised by commenters regarding the impact of the project are addressed in the EA and in the Environmental section of this order.

## C. Rates

### 1. Incremental Firm and Interruptible Recourse Rates

58. Texas Eastern's TEAM 2014 Project will make available an additional 600,000 Dth/day of firm transportation service on its system. While both expansion shippers have agreed to pay negotiated rates, Texas Eastern proposes to charge an incremental recourse rate for service using the new expansion capacity created by the TEAM 2014 Project.

59. Specifically, Texas Eastern proposes an initial incremental firm recourse rate under Rate Schedule FT-1 consisting of a reservation charge of \$13.798 per Dth, a usage-1 charge of \$0.00 per Dth, and a usage-2 charge of \$0.4536 per Dth. The proposed recourse rate is based on a Year 1 cost of service of \$99,344,582<sup>46</sup> and an estimated total capital cost of \$519,736,638 for the project facilities. Texas Eastern's existing on-shore transmission depreciation rate of 1.22 percent and pre-tax rate of return of 12.13 percent<sup>47</sup> were derived from Texas Eastern's cost-of-service settlement, as amended in Docket No. RP98-198-000, et al.<sup>48</sup> Texas Eastern's proposed incremental reservation rates for the project are higher than the system recourse rates contained in Texas Eastern's tariff.<sup>49</sup> Texas Eastern proposes to charge its system interruptible rate for interruptible throughput on the TEAM 2014 Project.<sup>50</sup>

60. Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate.<sup>51</sup> As Texas Eastern's proposed incremental recourse rate is higher than its existing firm system rate, we will approve its proposed

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<sup>46</sup> See Application at Exhibit N.

<sup>47</sup> See Application at Exhibits K and N.

<sup>48</sup> *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

<sup>49</sup> Texas Eastern's system rate for FT-1 transportation service from zone M2-M3 is \$8.4730 per Dth.

<sup>50</sup> See Application at 38.

<sup>51</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

initial firm incremental rate as an initial recourse rate for firm service using the incremental capacity created by the TEAM 2014 Project.

## **2. Incremental Fuel and Electric Power Rates**

61. Texas Eastern proposes to recover fuel use and lost and unaccounted for gas, as well as electric power costs associated with providing service on the TEAM 2014 Project facilities, through incremental Applicable Shrinkage Adjustment percentages and incremental Electric Power Cost rates.<sup>52</sup> Texas Eastern states that it will track changes in fuel and electric power costs for the proposed new services on an incremental basis through its Applicable Shrinkage Adjustment mechanism set forth in section 15.6 of its GT&C and through its EPC Adjustment mechanism set forth in section 15.1 of its GT&C. Texas Eastern states that it will adjust its periodic tracker mechanisms to ensure, as required by Commission policy, that existing customers do not subsidize the costs resulting from these new incremental services. We will approve Texas Eastern's request to recover incremental fuel use and electric power costs as proposed.

## **3. Reporting of Incremental Costs and Revenues**

62. To ensure that all parties will have access to full knowledge of the costs and revenues attributable to a project to create capacity for which incremental rates are being charged, the Commission requires the pipeline to keep separate books and accounting of costs attributable to the new facilities. Further, the books should be maintained with applicable cross-references as required by section 154.309 of the Commission's 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.<sup>53</sup>

## **4. Negotiated Rates**

63. Texas Eastern intends to enter into negotiated rate agreements with its shippers. In certificate proceedings, we establish initial recourse rates, but do not make

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<sup>52</sup> See Application at Exhibit Z-2.

<sup>53</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19,389 (April 10, 2008), FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

determinations regarding specific negotiated rates for proposed service.<sup>54</sup> Texas Eastern must file its negotiated rate agreements or tariff records describing the negotiated rate associated with these services in accordance with the Alternative Rate Policy Statement<sup>55</sup> and the Commission's negotiated rate policies.<sup>56</sup> Consistent with GT&C Section 29.7 of Texas Eastern's Tariff, Texas Eastern must either file the Project's shipper's negotiated rate agreements or a tariff record setting forth the essential terms of these agreements at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

#### **D. Protest and Comments**

##### **1. Segmentation**

64. The Clean Air Council and the Delaware Riverkeeper Network express concern that Texas Eastern may be improperly segmenting its expansion projects to avoid its responsibility to perform more rigorous environmental review under NEPA. These commenters assert Texas Eastern's pipeline expansion projects proposed and constructed in the last several years may be interdependent, and that these projects contribute cumulatively to existing air emissions.

65. In response, Texas Eastern states that the TEAM 2014 Project is not connected to any of Texas Eastern's recent expansion projects because TEAM 2014 Project has independent utility and serves a significant purpose separate and apart from every other Texas Eastern project. Texas Eastern contends that the TEAM 2014 Project is one of a group of "stand-alone, distinct projects that propose different facilities to create capacity for specific transportation services, shippers, and gas volumes."<sup>57</sup> Texas Eastern explains that it is constructing the TEAM 2014 Project to expand facilities to serve different

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<sup>54</sup> *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).

<sup>55</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

<sup>56</sup> *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>57</sup> Texas Eastern's April 22, 2013 Answer at 45.

anchor customers and different primary customers than its other recent expansion projects, specifically the TIME II, Northern Bridge, TEMAX, TIME III, and TEAM 2012 projects.<sup>58</sup> Additionally, Texas Eastern states that its facilities constructed as part of other recent expansion projects have already been placed in service and are serving customers independent of whether or not the TEAM 2014 Project is ever constructed, demonstrating that the TEAM 2014 Project has independent utility.

### *Commission Response*

66. The Commission applies the Council on Environmental Quality's (CEQ) regulations to determine whether two or more projects are "connected" and must be considered together.<sup>59</sup> The CEQ regulations state that a connected action is closely related because they "automatically trigger other actions" that may require environmental review, cannot or will not proceed "unless other actions are taken previously or simultaneously," and are "interdependent parts of a larger action and depend on the larger action for their justification."<sup>60</sup>

67. We agree with Texas Eastern that its TEAM 2014 Project is a stand-alone project designed to provide a contracted volume of gas to Chevron and EQT by a timeframe, separate and distinct from its TIME II,<sup>61</sup> Northern Bridge,<sup>62</sup> TEMAX, TIME III,<sup>63</sup> and TEAM 2012<sup>64</sup> projects. The TEAM 2014 Project has independent utility that warrants its

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<sup>58</sup> Texas Eastern's TIME II, Northern Bridge, TEMAX, TIME III, TEAM 2012 and TEAM 2014 each have a different set of primary customers and the projects were specifically tailored and designed to meet these customer's transportation requirements.

<sup>59</sup> 40 C.F.R. § 158.25(a) (2013).

<sup>60</sup> *Id.*

<sup>61</sup> *Texas Eastern Transmission, LP*, 119 FERC ¶ 61,258 (2007), *order dismissing reh'g*, 121 FERC ¶ 61,003 (2007).

<sup>62</sup> *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,342 (2008), *order denying reh'g*, 127 FERC ¶ 61,162 (2009).

<sup>63</sup> *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009), *order on reh'g*, 131 FERC ¶ 61,164 (2010) (order approving the TEMAX and TIME III projects).

<sup>64</sup> *Texas Eastern Transmission, LP*, 137 FERC ¶ 61,140 (2011), *order on clarification*, 138 FERC ¶ 61,012 (2012).

own environmental review. Although commenters did not cite to specific Texas Eastern projects that may be interdependent with the TEAM 2014 Project, Texas Eastern's TIME II, Northern Bridge, TEMAX, TIME III, TEAM 2012, and TEAM 2014 projects each have a different set of primary customers and are specifically tailored and designed project facilities, as observed by Texas Eastern.

68. The Commission previously found Texas Eastern's TIME II, Northern Bridge, TEMAX, TIME III, and TEAM 2012 projects are not connected actions.<sup>65</sup> Likewise, we find here that the listed projects already in operation are independent of the TEAM 2014 Project facilities to be constructed as part of this project. As asserted by Texas Eastern, the projects it referenced are distinct and independent in nearly every respect possible, with different open seasons, different in-service dates, different shippers, different facilities, different methods of expansion of capacity, and different degrees of pipeline construction and/or replacement in different areas.<sup>66</sup> The fact that the projects are proposed by the same pipeline company in the same general geographic region is not sufficient to make them "connected" actions. Rather, the evidence here shows that each project serves a "significant purpose" separate and apart from the other projects.

## 2. **Bundling and Competition**

69. The Municipal Defense Group does not agree with Texas Eastern's assertion that the TEAM 2014 Project will promote increased commodity price competition and reduced price volatility by introducing new Appalachian supply region gas to the Northeast, Midwest, Southeast, and Gulf Coast markets. The Municipal Defense Group is concerned that the TEAM 2014 Project's anchor shippers will become monopoly sellers in markets south of Lebanon, Pennsylvania. The Municipal Defense Group explains that the anchor shippers (who have fully subscribed the TEAM 2014 Project) will bundle their transportation and production services to sell the gas at whatever prices the market will bear, thus inhibiting, rather than promoting, competition in these markets.

70. Texas Eastern asserts that the Municipal Defense Group misunderstands the addition of supply on competition and price volatility. Texas Eastern explains that the TEAM 2014 Project creates an additional transportation option to the market on top of other proposed and constructed natural gas transportation projects and will bring an additional source of supply to the Northeast, Midwest, Southeast, and Gulf Coast

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<sup>65</sup> See *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 at P 74, *order on reh'g*, 131 FERC ¶ 61,164 at P 51.

<sup>66</sup> *Id.*

markets. Further, although the project is fully subscribed, Texas Eastern states that other customers are not restricted from obtaining similar take-away transportation rights and it is open to discussing other additional facility expansion options with existing and new shippers who are willing to execute firm service agreements for these additional facility expansions.

### Commission Response

71. The Municipal Defense Group has misunderstood our service unbundling policies. In Order No. 636,<sup>67</sup> we required, among other things, that pipelines engaged in the transportation of natural gas in interstate commerce not enjoy a monopoly position by providing both the transportation and marketing functions in the distribution of natural gas. Rather the Commission, with few exceptions, requires that those jurisdictional pipelines provide, on an open-access, transparent basis, transportation for anyone who desires to have gas transported on the pipelines' facilities and succeeds in acquiring whatever capacity is available. The pipelines provide the capacity to transport the gas, and the shippers contract for access to a portion of the available capacity. Any potential for the two anchor shippers for the TEAM 2014 Project to have monopoly power is limited, as (1) there are many other firm shippers on the Texas Eastern system with the ability to segment and release capacity, and (2) any capacity that the anchor shippers might seek to withhold from the market, the pipeline can re-market on an interruptible basis if it is not being used by the anchor shippers. Thus, as the natural gas production and pipeline infrastructure in the United States continues to develop, additional supply can reach the markets from various pipelines, not solely using the expansion capacity on any one pipeline's system or any one shipper's firm capacity.

72. Although the two expansion shippers have executed agreements for all 600,000 Dth/day of the transportation service made available by the TEAM 2014 Project, other customers had the opportunity to submit requests for Texas Eastern to construct

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<sup>67</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267, 13,268-69 (Apr. 16, 1992), FERC Stats. and Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. and Regs., Regulations Preambles January 1991-June 1996 ¶ 30,950 (1992); *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied*, 62 FERC ¶ 61,007 (1993); *affirmed in part and remanded in part, sub nom. United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

more incremental capacity. Indeed, Texas Eastern requested bids for up to an additional 800,000 Dth/day of transportation service above the commitments for the 600,000 Dth/day by Chevron and EQT. Other potential shippers were not prevented from seeking or competing through the open season process for expansion volumes, nor are they restricted from obtaining future take-away transportation rights or from contracting with a competitor pipeline to transport their gas. Further, pipeline operators are generally open to discussing further expansion options with existing and new shippers who are willing to execute service agreements for additional facility expansion opportunities. The fact that the TEAM 2014 capacity has been contracted by producers rather than by end-users or other entities, as is often the case, is merely an indication that those producers have detected a market for their product and are willing to obligate themselves to pay for firm transportation rights in order to be in position to satisfy those perceived market needs. Texas Eastern, and other jurisdictional pipelines, have not and may not restrict this or other transportation service, but must provide service without undue discrimination or preference.<sup>68</sup>

#### **IV. Environmental Analysis**

##### **A. Pre-filing Review**

73. Commission staff began its environmental review following its approval of Texas Eastern's request to use the pre-filing process on July 13, 2012, in Docket No. PF12-19-000. As part of the pre-filing review, the staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Texas Eastern Appalachia to Market 2014 (TEAM 2014) Project and Request for Comments on Environmental Issues* (NOI) on October 4, 2012.<sup>69</sup> The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

74. We received comments in response to the NOI from the U.S. Fish and Wildlife Service (FWS), U.S Army Corps of Engineers (Army Corps), Alabama Historical Commission, ConocoPhillips, National Grid, the Department of Defense, the Tennessee Historic Commission, Andy Miles, and William Beaumariage. We received additional comments from Lebanon County Pennsylvania Planning Commission, Berks County Pennsylvania Planning Commission, Herbert Greider and Karen Feridun after the scoping period closed. The primary concerns were about the TEAM 2014 Project's purpose and

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<sup>68</sup> 18 C.F.R. § 284.7(b) (2013).

<sup>69</sup> 77 Fed. Reg. 62,507 (Oct. 15, 2012).

need, construction procedures, impacts on waterbodies resources, wildlife and habitat, cultural resources, cumulative impacts, and alternatives.

75. National Grid's comments were in support of the project and indicated that the proposal would enhance the availability of gas to its customers. The comments from the Department of Defense and the Tennessee Historic Commission indicated that they do not object to the project.

## **B. Application Review**

76. To satisfy the requirements of NEPA, our staff prepared an EA for Texas Eastern's proposal. The EA was prepared with the cooperation of the Army Corps, Baltimore District. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. In the EA we addressed all substantive comments received in response to the NOI.

77. Commenters expressed concern about the project's purpose and need. The EA describes Texas Eastern's stated purpose and need for the project as the transportation of 600,000 Dth/day of natural gas to markets along the Texas Eastern system in the Northeast and Gulf Coast areas, as well as to markets in the Midwest and Southeast.<sup>70</sup> Texas Eastern states that satisfaction of the precedent agreements requires additional capacity.

78. The EA also addresses impacts on water resources (specifically, impacts on groundwater, wetlands, and streams) and general impacts on wildlife habitat.<sup>71</sup> The EA concludes that Texas Eastern would adequately minimize impacts on these resources through the use of the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures). Texas Eastern will also implement the best management measures described in its project specific Erosion and Sediment Control Plan to minimize impacts on groundwater, wetlands, and streams and impacts on wildlife habitat.

79. The Alabama Historical Commission raised concerns regarding the need for a cultural resources survey. Texas Eastern will restrict the proposed disturbance in Alabama to areas where Texas Eastern has its existing facilities. The Alabama Historical

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<sup>70</sup> EA at 1.

<sup>71</sup> EA at 26-41.

Commission later responded in a letter dated December 13, 2012, that the TEAM 2014 Project would have no effects on historic properties.<sup>72</sup>

80. During the scoping process, commenters stated that Commission staff should review the cumulative impacts of other activities that would be caused by increased access to the natural gas pipeline. As noted in the EA,<sup>73</sup> the Commission's authority under the NGA relates only to natural gas facilities that are involved in interstate commerce. However, the cumulative impacts section of the EA addressed other past, present, and reasonably foreseeable future activities, including natural gas exploration, well and pad construction, drilling and extraction, construction of access roads, gathering lines, storage facilities and processing plants. The EA concludes that the TEAM 2014 Project's contribution to cumulative impacts will not be significant due to Texas Eastern's implementation of specialized techniques, construction timeframes, and developed mitigation plans.<sup>74</sup>

81. Commenters requested that EA review other system alternatives; specifically, alternatives involving the CRP system. The EA addresses multiple alternatives including a number of system alternatives and found that implementing these alternatives would not be environmentally preferable to the proposed action or could not meet the project's objective.<sup>75</sup>

82. We issued the EA for a 30-day comment period, placed it into the public record on September 19, 2013, and mailed copies to all participants on the project's environmental mailing list. The Commission received comments on the EA from the U.S. Environmental Protection Agency (EPA), Pennsylvania Natural Heritage Program, Pennsylvania Department of Environmental Protection (Pennsylvania DEP), Berks County Pennsylvania Planning Commission, Berks County League of Women Voters, Delaware Riverkeeper Network, Clean Air Council, ConocoPhillips, Carol Anne Donohoe, Susan Shaak, Kim Stahler, James Rosenberg, Sondra Wolferman, Kevin O'Neill, Nancy Kaufmann, Cindi Atribat, Noel Karasin, Cindy Tricoski, Cynthia Chmelewski, Karen Feridun, Dennis Baylor, Valerie Berg, Cyndi Kumor, Kim Stabler, and Mark Fiorini. The primary issues raised in response to the EA concern the project's purpose and need, potential impacts on water quality, waterbodies and wetlands,

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<sup>72</sup> EA at 47.

<sup>73</sup> EA at 85.

<sup>74</sup> EA at 90.

<sup>75</sup> EA at 91-96.

vegetation and wildlife, geology and soils, land use, air and noise quality, safety, cumulative impacts, and alternatives. In addition, some commenters expressed concern about an operational incident that occurred at Texas Eastern's existing Bernville Compressor Station located in Berks County, Pennsylvania, which is not directly related to the project. However, we discuss this incident below under Public Safety. Texas Eastern filed a supplement on October 30, 2013, and several responses to comments on November 7, 2013, November 12, 2013, and November 13, 2013.

### C. General

83. Some commenters, including the Delaware Riverkeeper Network and the Clean Air Council, request the development of an Environmental Impact Statement (EIS) for the project. The Commission's regulations implementing NEPA provide that an EIS "will normally" be prepared for "major pipeline construction using rights-of-way in which there is no existing natural gas pipeline." However, as explained in the EA, the regulations provide that "[i]f the Commission believes that a proposed action ... may not be a major Federal action significantly affecting the quality of the human environment, an [EA], rather than an [EIS], will be prepared first."<sup>76</sup> The TEAM 2014 Project involves: the construction of several segments of pipeline looping totaling approximately 33.6 miles of new 36-inch-diameter pipeline, 99 percent of which will be located within or adjacent to Texas Eastern's existing rights-of-way; horsepower upgrades at four existing compressor stations; and modifications to numerous existing facilities to allow bi-directional flow/transmission of natural gas. The Commission's years of experience with NEPA implementation for pipeline projects indicates that such a project normally would not fall under the "major" category for which an EIS is automatically prepared.<sup>77</sup>

84. The Council on Environmental Quality (CEQ) regulations implementing NEPA state that one of the purposes of an EA is to assist agencies in determining whether to prepare an EIS. Here, Commission staff prepared an EA to determine whether the

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<sup>76</sup> 18 C.F.R. § 380.6(b) (2013). See EA at 97.

<sup>77</sup> See, e.g., *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011) (EA issued for a project which included a gas storage field on 2,050-acre site and associated 61.6-mile, 36-inch-diameter pipeline in Utah); *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,140 (2010) (EA issued for a project consisting of 127.4 miles of 30-inch-diameter pipeline loops in Pennsylvania and New Jersey); *Colorado Interstate Gas Co.*, 131 FERC ¶ 61,086 (2010) (EA issued for a project which included two new 16-inch-diameter pipeline laterals totaling 118 miles in length in Colorado); *Equitrans, L.P.*, 117 FERC ¶ 61,184 (2006) (EA issued for a project which included 68 miles of new 20-inch-diameter pipeline in Kentucky).

TEAM 2014 Project would have a significant impact, necessitating the preparation of an EIS. As explained below, the EA concludes, and we agree, that approval of the TEAM 2014 Project would not constitute a major federal action significantly affecting the quality of the human environment.<sup>78</sup> Thus, an EIS is not required.<sup>79</sup>

85. Kevin O'Neill requests that the EA comment period be extended to six months or one year to allow for sufficient time to alert people about the proposal. The commenter also states that no reasonable process exists or appears to be in place to properly inform and solicit feedback regarding the proposal. We disagree. As indicated earlier, Texas Eastern participated in the Commission's pre-filing process, which began in July 2012. During the pre-filing process Texas Eastern filed drafts of environmental resource reports and Commission staff issued notices and other documents. All of this information was placed in the record and was made available for public review and comment. In addition, staff mailed notices directly to affected landowners and other stakeholders that expressed interest in the project. This process continued after Texas Eastern filed its application in February 2013. The Commission's application, intervention, and environmental review processes allow for ample opportunity for public involvement of interested individuals and parties. We find no compelling reason to further extend the EA comment period.

86. Further, Mr. O'Neill requests funding or resources from Texas Eastern to assist in a grassroots outreach effort to develop protocols to alert people about the project. We find Texas Eastern developed and implemented outreach communication procedures and held six public open houses for the project as part of the pre-filing process.<sup>80</sup> As previously stated, the Commission also provided adequate notice to stakeholders and provided opportunities to participate in the review process. It is beyond the purview of the Commission to require Texas Eastern to provide such funding.

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<sup>78</sup> EA at 97. The CEQ's regulations state that a "[m]ajor [f]ederal action includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly. (Sec. 1508.27)." 40 C.F.R. § 1508.18 (2013). In addition, the CEQ's regulations state that "[s]ignificantly as used in NEPA requires consideration of both the context and intensity" of the project. 40 C.F.R. § 1508.27 (2013).

<sup>79</sup> The CEQ's regulations state that, where an EA concludes in a finding of no significant impact, an agency may proceed without preparing an EIS. *See* 40 C.F.R. §§ 1501.4(e), 1508.13 (2013).

<sup>80</sup> EA at 2.

87. Cyndi Kumor states that regulatory agencies should be protected from political or financial influences. The Commission is composed of up to five commissioners who are appointed by the President of the United States with the advice and consent of the Senate. Commissioners serve five-year terms and each Commissioner has an equal vote on regulatory matters. To avoid any undue political influence or pressure, no more than three commissioners may belong to the same political party. There is no review of Commission decisions by the President or Congress, which maintains the Commission's independence as a regulatory agency and provides for fair and unbiased decisions.

88. Further, the Commission is funded through costs recovered by the fees and annual charges from the industries it regulates. As recently explained in *Texas Eastern Transmission, LP, et al.*, the Commission is not self-funding in the sense of keeping what it collects. Instead, each year Congress appropriates funds for the Commission's operations, with the stipulation that the Commission reimburse the Treasury the same amount by collecting the fees and charges from the entities it regulates.<sup>81</sup> For jurisdictional natural gas companies, the Commission annually compares the amount of gas each company transports to the total amount transported by all jurisdictional gas companies, then calculates and imposes a proportional volumetric charge on each company.<sup>82</sup> "All moneys received" by the Commission from fees and charges are "credited to the general fund of the Treasury."<sup>83</sup> At the end of each year the Commission "trues up" its collection by making "such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person."<sup>84</sup> Therefore, there is no financial incentive for the Commission to grant or deny an application for a gas project, as the outcome will have no more than a *de minimis* impact on the total cost of carrying out the Commission's regulatory responsibilities.

89. The Delaware Riverkeeper Network recommends that the Delaware River Basin Commission should be invited to be a cooperating agency. Agencies may choose, but are not required, to participate in the NEPA process. As stated above, on October 4, 2012, Commission staff issued a notice in Docket No. PF12-19-000, which invited agencies to participate as cooperating agencies during the preparation of the EA for the TEAM 2014

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<sup>81</sup> 42 U.S.C. § 7178 (2012).

<sup>82</sup> 18 C.F.R. § 382.202 (2013).

<sup>83</sup> 42 U.S.C. § 7178(f) (2012).

<sup>84</sup> *Id.* at 7178(e).

Project. The Delaware River Basin Commission did not request cooperating agency status for the TEAM 2014 Project.

90. Carol Anne Donohoe expresses concern about the project's purpose and need, generally asserting that the demand for natural gas may be declining in the United States. The EA describes the purpose and need of the project for purposes of defining the scope of the alternatives analysis. The EA also notes, and this order previously stated, that Texas Eastern has entered into binding precedent agreements with shippers for the entire capacity of the project.<sup>85</sup> As described in the Commission's Policy Statement for the project, the Commission finds that there is a sufficient showing of market need.

91. The Delaware Riverkeeper Network also suggests that the project objectives were too narrowly defined, so as to preclude consideration of any alternatives to the TEAM 2014 Project. We disagree. Courts have upheld federal agencies' use of applicants' identified project purpose and need as the basis for evaluating alternatives.<sup>86</sup> This general principle, as noted above, is subject to the admonition that a project's purpose and need may not be so narrowly defined as to preclude consideration of what may actually be reasonable choices.<sup>87</sup> Thus, objectives must be reasonably identified and defined.<sup>88</sup> The purpose of the TEAM 2014 Project is to provide additional incremental natural gas transportation service to markets in the Northeast, Midwest, Southeast, and Gulf Coast. We find this objective appropriate for evaluating reasonable alternatives to the TEAM 2014 Project.

92. Further, an EA must provide "brief discussions of the need for the proposal, of alternatives ...[and] of environmental impacts of the proposed actions and alternatives ...."<sup>89</sup> As the commenter noted, "an agency may not define the objectives of

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<sup>85</sup> EA at 1.

<sup>86</sup> *City of Grapevine, Texas v. DOT*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

<sup>87</sup> *Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073, 1085 (9<sup>th</sup> Cir. 2012); *Simmons v. U.S. Army Corps. of Engineers*, 120 F.3d 664, 669 (7<sup>th</sup> Cir. 1997); *Citizens against Burlington, Inc. v. Busey*, 938 F.2d 190, 198-99 (D.C. Cir. 1991) (*Citizens v. Busey*).

<sup>88</sup> See, e.g., *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066-67 (9<sup>th</sup> Cir. 1998), stating that while agencies are afforded "considerable discretion to define the purpose and need of a project," agencies' definitions will "be evaluated under a reasonableness standard."

<sup>89</sup> 40 C.F.R. § 1508.9 (2013).

its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action ...."<sup>90</sup> However, an EA discussion of alternatives need not be exhaustive, and need only provide sufficient information to permit a reasoned choice of alternatives.<sup>91</sup> Here, the EA considered three alternatives to the TEAM 2014 Project that would meet the stated purpose and need of the project.<sup>92</sup>

93. Cyndi Kumor is concerned about polychlorinated biphenyl (PCB) contamination resulting from the operation and maintenance of existing pipelines. Texas Eastern stated in its application that it would manage, in accordance with the EPA regulations,<sup>93</sup> those existing pipeline facilities (e.g., pipe, valves, fittings) used in gas service that have the potential for PCB contamination. As indicated in Environmental Condition 6 (contained in the attached Appendix to this order), we require Texas Eastern to follow the construction procedures and mitigation measures in its application for this project.

94. The Delaware Riverkeeper Network requests to have hydraulic modeling information that is reviewed by the Commission made available to the public to review and comment. Information identified as "proprietary" is not available to the general public. However, interested parties may generally gain access to such material for purposes of participation in the proceeding subject to the provisions of a non-disclosure agreement with the applicant. Further, the Delaware Riverkeeper Network focuses on the use of a third party consultant to be an Environmental Inspector and questions whether Texas Eastern has influence over the selection of the inspector. Texas Eastern must hire a qualified Environmental Inspector that will be on site at all times for each construction spread, as required by Environmental Condition 11. Commission staff, or a consultant selected by the Commission, will also conduct inspections during the construction and restoration period for the project to ensure Texas Eastern's compliance with the conditions of this order. As described in Appendix C of the EA, the Environmental Inspector employed by Texas Eastern has peer status and authority to stop work activities and ensure compliance with the environmental conditions of the certificate and Texas Eastern's proposed mitigation measures.

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<sup>90</sup> *Citizens v. Busey*, 938 F.2d at 196.

<sup>91</sup> *North Carolina v. FPC*, 533 F.2d 702, 707 (D.C. Cir. 1976), *vacated on other grounds*, 429 U.S. 891 (1976).

<sup>92</sup> EA at 91-96.

<sup>93</sup> *See* 40 C.F.R. § 761 *et al.* (2013).

**D. Water Quality**

95. Pennsylvania DEP notes that the EA did not accurately describe its 401 water quality certification procedures. We acknowledge this and clarify that Texas Eastern will comply with Pennsylvania DEP permitting requirements. This clarification does not affect any conclusions reached in the EA.

96. Several commenters, including Cynthia Chmelewski and Carol Ann Donohoe, express concerns about the project's potential impacts on sensitive environmental areas and water quality during construction activities, such as impacts on Manatawny Creek and Ontelaunee Lake. The EA analyzes impacts on surface water and groundwater resources and describes the measures Texas Eastern will implement to avoid and minimize impacts on these and other resources. The EA concludes that construction and operation of the project will not significantly affect groundwater or surface water.<sup>94</sup> In addition, the EA finds that the project will not significantly affect water supply wells because of the characteristics of the underlying aquifers; the collocation of the pipeline facilities; Texas Eastern's proposed construction, operation and maintenance procedures; and its implementation of impact minimization measures. In addition to implementing our Plan and Procedures' standard impact minimization measures, Texas Eastern will also implement measures described in its project-specific Erosion and Sediment Control Plan and Spill Prevention, Control, and Countermeasure Plan. We concur with the EA findings.

97. The Delaware Riverkeeper Network states that sediment is the primary stressor on river and stream ecosystems and that the erosion and control measures identified in the EA do not account for significant rain events. The EA states that construction would increase the potential for erosion and sedimentation and identifies the potential effects of increased sedimentation, including effects on fisheries.<sup>95</sup> The EA finds, based on several factors including Texas Eastern's implementation of impact minimization measures, that constructing and operating the pipeline facilities would not significantly affect surface waters and fisheries.<sup>96</sup> These measures include the use of "dry crossing" construction techniques that are designed to minimize sedimentation impacts. We concur. Additionally, to address significant rain events, the water resources section of the EA states that to avoid and minimize effects on waterbodies, Texas Eastern will implement

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<sup>94</sup> EA at 26-29.

<sup>95</sup> EA at 30.

<sup>96</sup> EA at 27 and 30.

numerous measures including high-flow contingency measures.<sup>97</sup> We find these measures will adequately address high rain events during construction.

98. The Delaware Riverkeeper Network cites a significant erosion event that occurred on a recent Commission-approved project in New Jersey and wants to ensure that such an event is not repeated during construction of Texas Eastern's project. The referenced project had just finished construction on a lengthy steep slope where permanent erosion controls had not yet been installed when a heavy rain event occurred. Afterward, the slope was restored and the slope maintained its integrity during two subsequent heavy rainfall events. We acknowledge here that heavy precipitation on steep slopes may accelerate the natural process of erosion when soil is disturbed during construction. The TEAM 2014 Project does not cross slopes of such length and steepness found on the portion of the New Jersey project mentioned above. Texas Eastern will use measures incorporated in the Plan and Procedures to minimize erosion and sedimentation. In addition, Texas Eastern will also implement best management practices detailed in its Erosion and Sediment Control Plan. Texas Eastern's operation staff will routinely monitor the construction right-of-way during construction and restoration to ensure compliance with these measures and requirements to ensure restoration success. Once revegetation of the right-of-way is successful, significant erosion events are unlikely. We conclude that these methods will sufficiently minimize the potential for significant erosional impacts.

99. The Delaware Riverkeeper Network is concerned that we do not require Texas Eastern to perform baseline testing on water temperatures within waterbodies crossed by the project to determine whether post-construction temperatures are the same as pre-construction temperatures. The EA states that water flow and quality (including temperature) could be affected by construction of the project, but finds (based in part on Texas Eastern's implementation of impact minimization measures) that constructing and operating the pipeline facilities will not significantly affect surface waters.<sup>98</sup> We agree.

#### **E. Wetlands and Waterbodies**

100. The EPA states that the EA does not appear to contain any specific mitigation plan or measures that address impacts on streams and wetlands. After noting Texas Eastern's Erosion and Sediment Control Plan, the EPA states that to avoid or minimize potential impacts on water quality, Texas Eastern should be required to adhere to the Commission's 2013 Plan and Procedures. The Commission issued the 2013 Plan and

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<sup>97</sup> EA at 28.

<sup>98</sup> EA at 28.

Procedures for use after Texas Eastern filed its application the project. The EA states that, except where there are requests for alternative measures, Texas Eastern's Erosion and Sediment Control Plan is consistent with our 2003 Plan and Procedures.<sup>99</sup> Prior to construction, Texas Eastern will be asked by staff to address and/or adopt the new measures in the 2013 Plan and Procedures, with its filed Implementation Plan

101. The Delaware Riverkeeper Network recommends that the Commission evaluate the amount of forested wetlands that could be converted to emergent wetlands within the permanent right-of-way expansion. Approximately 1.5 acres of forested wetlands will be converted to emergent wetlands and permanently converting these wetlands will result in the loss of forested vegetation, associated habitat, and function. However, the permanent right-of-way will retain some wildlife habitat and wetland function as some of the affected wetlands are converted to a different wetland type. As stated in the EA,<sup>100</sup> Texas Eastern, in consultation with the FWS, will replant native trees on approximately 1.4 acres of land affected by temporary workspace, which will further minimize impacts.

102. Berks County Pennsylvania Planning Commission notes that the discussion in the fisheries section of the EA regarding wild trout waters is inconsistent with the waterbodies table in Appendix F of the EA. We acknowledge the discrepancy and determine that based on further review of the Pennsylvania Fish and Boat Commission's list of Pennsylvania Wild Trout Waters that both Laurel Run and the unnamed tributary to Willow Creek are "wild trout waters." This new information does not change the EA's findings that constructing and operating the pipeline will not significantly affect fisheries, migratory fish or fisheries of special concern.

#### **F. Vegetation and Wildlife**

103. Commenters, including Sondra Wolferman and the Delaware Riverkeeper Network, note concerns about forest fragmentation and invasive species. To minimize effects on forests and vegetation, Texas Eastern, in consultation with the FWS, identified four areas, totaling approximately 1.4 acres of land, where it will replant native trees within temporarily affected workspace.<sup>101</sup> The EA determined that the potential spread of nuisance plant invasive species is adequately minimized based on: the characteristics of the types of vegetation affected; the collocation of the pipeline facilities; Texas Eastern's construction, operation, and maintenance procedures; and Texas Eastern's

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<sup>99</sup> EA at 9 and Appendix C.

<sup>100</sup> EA at 33.

<sup>101</sup> EA at 33.

implementation of impact minimization measures. Further the EA finds that the constructing and operating the facilities will not significantly affect vegetation or result in extensive forest fragmentation.

104. Sondra Wolferman contends that pipeline construction would result in the routine spraying of herbicides, which would adversely affect aquatic wildlife, amphibians, and reptiles. The EA states that Texas Eastern will construct the project as outlined in its Erosion and Sediment Control Plan, which is consistent with our Plan and Procedures. Texas Eastern's Erosion and Sediment Control Plan states that herbicides or pesticides will not be used in or within 100 feet of a wetland or waterbody except as specified by the appropriate land management or state agency. Therefore, based on the analyses provided in the EA, the collocation of the facilities adjacent to existing utility rights-of-way, which will result in the permanent loss of only 27 acres of forested lands, and Texas Eastern's implementation of impact minimization measures including those described in its Erosion and Sediment Control Plan, we concur with the EA's findings and its conclusion.

105. Commenters, including Sondra Wolferman and Cynthia Chmelewski, are concerned about the project's impact to wildlife habitat. The EA states that constructing and operating the facilities will not significantly affect wildlife based on: the characteristics of the habitat types crossed, the wildlife species occupying these habitats, Texas Eastern's proposed construction methods, the presence of similar habitats adjacent to and in the vicinity of construction activities, and the implementation of impact minimization measures.<sup>102</sup>

106. Mike Fiorini states that the project not be approved because the project crosses wetlands and impacts potential bog turtle habitat, waterbodies, and eastern small footed bats. The EA addresses wetlands and waterbodies and finds that constructing and operating the pipeline facilities will not significantly affect these resources.<sup>103</sup> The EA also finds that the project is not likely to adversely affect the federally threatened bog turtle.<sup>104</sup> This determination was made based on Texas Eastern surveys required by the FWS indicating that bog turtles are absent from crossed wetlands. In compliance with Section 7 of the Endangered Species Act, consultation with the FWS is ongoing; therefore, Environmental Condition 16 requires that construction activities shall not begin until our staff receives comments from the FWS regarding the proposed action. Lastly,

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<sup>102</sup> EA at 35.

<sup>103</sup> EA at 27-32.

<sup>104</sup> EA at 37-39.

the EA finds that constructing and operating the project facilities will not significantly impact Pennsylvania endangered species, including the eastern small footed bat.<sup>105</sup> However, as described in the EA, because some surveys are not complete, Environmental Condition 17 requires that Texas Eastern file any outstanding survey results and any additional mitigation prior to construction.

### **G. Geology and Soils**

107. Commenters, including Karen Feridun, Susan Shaak, and the Berks County Pennsylvania Planning Commission, express general concerns with potential sinkholes occurring at Schuylkill River. During the project's environmental review our staff reviewed the geological concerns within the project area and along the Bernville Loop from mileposts 0.0 to 2.3, including the Schuylkill River crossing.<sup>106</sup> Per Environmental Condition 14, Texas Eastern is required to provide results of a geophysical investigation for the first 2.3 miles of the Bernville Loop prior to construction. The investigation report will include details of the findings and analysis of the impacts of construction on the karst surface features, groundwater, and the adjacent Schuylkill River. Although Texas Eastern has not encountered issues with sinkholes during previous pipeline construction in the area, the location has karst features, which have the potential to develop sinkholes.

108. Nancy Kaufmann is concerned about potential spills during the installation of the pipeline and the potential contamination of the soils. As stated in the EA, Texas Eastern's use of its Erosion and Sediment Control Plan, Spill Prevention, Control, and Countermeasure Plan, and Unexpected Contaminated Encounter standard operating procedure during construction and restoration will adequately minimize impacts on soils due to potential spills for the project.<sup>107</sup>

### **H. Land Use**

109. Cindi Abribat states concern regarding impacts on land use, specifically, farmland and open space. Construction of the project mainly affects agricultural land (approximately 188.7 acres). In accordance with the Erosion and Sediment Control Plan and mitigation measures, Texas Eastern is required to return active croplands and open space to the original conditions upon the completion of the project restoration. The EA

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<sup>105</sup> EA at 39-40.

<sup>106</sup> EA at 22-23.

<sup>107</sup> EA at 24 and 26.

states that staff reviewed these plans and found them acceptable to minimize topsoil losses, soil compaction, and topsoil mixing with subsoil.

110. The Delaware Riverkeeper Network states that Texas Eastern was not required to reduce the area disturbed along the right-of-way. During the project's review, staff thoroughly assessed Texas Eastern's land requirements, particularly in environmentally sensitive areas. As stated in the EA, Texas Eastern will collocate its pipeline facilities with existing rights-of-way, utilize to the extent practical maintained rights-of-way (overlapping), and reduce its land requirements through wetlands and threatened and endangered species habitat. Based on Texas Eastern's land requirements and our staff's review, the EA finds that Texas Eastern sufficiently reduced the amount of land disturbed along the proposed pipeline route to the extent practicable.

111. Commenters, including Kim Stabler and Karen Feridun, note concerns regarding impacts on residential areas. Texas Eastern plans construction activities in residential areas for daytime working hours and will expedite construction in residential areas. Texas Eastern will use dust mitigation measures, and will construct the project in accordance with its Erosion and Sediment Control Plan and mitigation measures. As stated in the EA, Texas Eastern will coordinate with property owners throughout the construction process to minimize disruption and maintain access to residences, commercial establishments, industrial areas, and other buildings.<sup>108</sup> Based on our staff's analysis, the EA concludes that Texas Eastern's mitigation measures will adequately reduce the impacts in municipalities during construction.

112. Berks County Pennsylvania Planning Commission states that the EA did not mention the Schuylkill River Water Trail, a location within the National and State Heritage Area. The trail was established for water recreation. We acknowledge that the Schuylkill River Water Trail is part of the National and State Heritage Trail and that the project will cross it. As stated in the EA, Texas Eastern will use a horizontal directional drilling method to cross the Schuylkill River, which will largely avoid impacts on recreational use along the trail. Texas Eastern's Erosion and Sediment Control Plan will mitigate impacts on water resources.

113. Commenters, including Berks County Pennsylvania Planning Commission and Berks County League of Women Voters, note potential construction impacts on traffic (roadway and railway). Texas Eastern will bore under Pennsylvania State Route (SR) 61, SR 73, U.S. Interstate 222, and U.S. Interstate 222 Business to minimize impacts on traffic and need for road closures. The EA states that boring entails drilling a hole below travel roadways through which the pipe will pass. Texas Eastern will use the boring

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<sup>108</sup> EA at 12 and 44.

method at major road and railway crossings to minimize or eliminate disruption to car and rail traffic flow.<sup>109</sup> We agree that these measures will adequately minimize traffic impacts of the project.

114. Commenters, including Berks County Pennsylvania Planning Commission and Berks County League of Women Voters, suggest contacting the Reading Area Water Authority, the Maiden creek Township Water Authority, Reading Blue Mountain & Northern Railroad Company, and Norfolk Southern Corporation to minimize impacts to existing infrastructure in the area of the Bernville Loop. In a filing dated November 7, 2013, Texas Eastern notified the Commission that it is in ongoing discussions with Reading Area Water Authority and Maiden creek Township Water Authority regarding potential impacts of construction and will develop appropriate measures to mitigate impacts on infrastructure and resources, and it is also in ongoing discussions with the Norfolk Southern Railroad and the Reading Blue Mountain & Northern Railroad Company regarding potential impacts and appropriate measures to mitigate impacts of construction on each of the railroads. Texas Eastern will include any resulting mitigation plans in its implementation plan required by Environmental Condition 7.

#### **I. Air Quality**

115. The EPA comments that the EA improperly characterizes the project's background air quality because the project spans counties in Pennsylvania, West Virginia, Ohio, Kentucky, Tennessee, Alabama, and Mississippi, yet the EA presents only air quality monitoring data from Pennsylvania Counties. In addition, the EPA states that this monitoring data is not directly comparable to the National Ambient Air Quality Standards (NAAQS).

116. The EA states that the main project components would be located in various counties in Pennsylvania and that only minor project components that allow bidirectional flow of natural gas would be located in counties in West Virginia, Ohio, Kentucky, Tennessee, Alabama, and Mississippi.<sup>110</sup> The EA includes the generic background air quality characterization for all counties in every state affected by the project in Table 16 by identifying each county's attainment status for each criteria pollutant.<sup>111</sup> The monitoring data presented in Table 15 of the EA provides a general summary of the

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<sup>109</sup> EA at 9-10.

<sup>110</sup> EA at 3-7 and Appendix B.

<sup>111</sup> EA at 52 and 53.

current background concentrations occurring in the counties where new operating emissions will also occur.

117. The EPA comments that if Table 17 of the EA represents a summarization of the Prevention of Significant Deterioration analysis, it uses incorrect terminology and should clearly explain the relationship to Prevention of Significant Deterioration. Table 17 of the EA is a summary of the various existing operating conditions, projected new emissions, any excluded or credited emissions (e.g., eliminated equipment), and the resulting change in emissions anticipated at each facility. The EA states that Pennsylvania DEP has air-permitting authority for each compressor station modification, including Prevention of Significant Deterioration permitting.<sup>112</sup> Pennsylvania DEP would ensure that the Plan Approval Permits, which include Prevention of Significant Deterioration, reflect the appropriate terminology. However, to address Prevention of Significant Deterioration permitting, Texas Eastern provided copies of its Plan Approval Applications as part of Resource Report 9 to its application, and the EA summarizes Prevention of Significant Deterioration permitting applicability.<sup>113</sup>

118. The Clean Air Council argues that the EA fails to independently assess air quality impacts because the Commission relies upon standards or permits administered by other agencies.<sup>114</sup> The EA does not defer our NEPA responsibilities to other agencies; rather it explains that based on Texas Eastern's compliance with other laws and mitigation required by the Commission and other agencies, the EA can recommend a finding of no significant impact. The EA independently quantifies the project's impact on air quality and presents an analysis of the emissions relative to protect human health and welfare. The EA further states that the Commission is not responsible for issuing permits related to compliance with the Clean Air Act. It identifies several specific federal and state air quality regulations that potentially apply to the project and notes that Pennsylvania DEP has permitting authority over the compressor stations.<sup>115</sup> It is not unreasonable for the EA to assume that Texas Eastern will comply with permit requirements because other agencies will require Texas Eastern to do so. Further, the EA recommends and Environmental Condition 8 requires that Texas Eastern document that it has received all

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<sup>112</sup> EA at 62 and 63.

<sup>113</sup> EA at 55.

<sup>114</sup> The Clean Air Council cites to *Limerick Ecology Action, Inc. v. U.S. Nuclear Regulatory Comm'n*, 869 F.2d 719, 729 (3d Cir. 1989) and *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1123 (D.C. Cir. 1971).

<sup>115</sup> EA at 53-63.

necessary authorizations under federal law prior to receiving authorization to commence construction of project facilities.<sup>116</sup> By assuming that Texas Eastern will adhere to these different requirements, the Commission is not abdicating its responsibility nor are we deferring our analysis; rather, we are looking at the impacts of the project within that context. The commenter offers no evidence why it is inappropriate to assume Texas Eastern will adhere to its permit requirements.

119. The EPA and Pennsylvania DEP state that the General Conformity Analysis, construction emission estimates, and operating emission estimates should include the underlying assumptions used (list of equipment, operating hours, load factors, equations, etc.) and related calculations. The EA is a summary document of all construction and operating information and analyses performed for the project. It includes a General Conformity Applicability Analysis summarizing the emission estimates for the project in comparison with the General Conformity Regulations.<sup>117</sup> All assumptions and detailed calculations are available publicly as part of Resource Report 9 to Texas Eastern's application and supplemental filings for the project.

120. Pennsylvania DEP comments that construction emission estimates should have used forklift emission factors. Similarly, Pennsylvania DEP notes that graders are typically used to change the contours of roads and requests that the EA account for their contribution to the construction emissions. Pennsylvania DEP also requests inclusion or identification of deterioration factors in the construction emission estimates. In a response dated November 7, 2013, Texas Eastern clarifies that: forklift engine emission factors are not available in the model it used; it considered Bobcat emission factors to be representative of forklifts; and it will use bulldozers instead of graders to change the contours of the roads. These estimates are presented in the EA.<sup>118</sup> Texas Eastern also identified that deterioration factors were used in accordance with the methodologies presented in EPA guidance documents.<sup>119</sup> We find Texas Eastern's assumptions are acceptable and do not change the EA's conclusion that emissions associated with the

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<sup>116</sup> EA at 99 and Environmental Condition 8.

<sup>117</sup> EA at 58-60.

<sup>118</sup> See Texas Eastern's Response to Comments on the EA filed November 7, 2013.

<sup>119</sup> EPA. *Exhaust and Crankcase Emission Factors for Nonroad Engine Modeling – Compression - Ignition*. July 2010; EPA. *Exhaust Emission Factors for Nonroad Engine Modeling – Spark - Ignition*. July 2010.

construction phase would be short-term in nature and would not result in significant impact.

121. Pennsylvania DEP also requests revised construction emission estimates for trucks and cold planer usage. Texas Eastern updated its construction emission estimates to include additional mileage for trucks along the pipeline loop segments. Texas Eastern also added cold planer and dump truck tailpipe emissions to account for the removal of asphalt. These additional emissions resulted in an increase of 0.6 pounds per year to 2.08 tons per year at each loop, depending on the pollutant and project component. This increase does not change the resulting General Conformity applicability for any nonattainment or maintenance area. Also, the revised emissions do not change the EA's conclusion that emissions associated with the construction phase would be short-term in nature and would not result in a significant impact.<sup>120</sup>

122. The Clean Air Council contends that the EA's use of the global warming potential of 21 for methane over a 100-year period is improper because the Intergovernmental Panel on Climate Change has revised this value to be 25. The Clean Air Act of 1970 and its amendments gave the EPA primary authority to implement and enforce regulations to reduce air pollution. When the EA was issued, the EPA accepted value for the global warming potential for methane was 21.<sup>121</sup> On November 29, 2013, the EPA issued a final rule to change the global warming potential of methane from 21 to 25, effective January 1, 2014, as part of EPA's changes to the Greenhouse Gas Reporting Rule. Commission staff will request the use of the revised value in future NEPA evaluations.

123. The EPA and the Clean Air Council state that the EA fails to quantify fugitive methane emissions from the pipeline and compressor stations. The EA quantifies greenhouse gas emissions for operation of each compressor station in Table 17, which includes fugitive emissions, and notes that it considered methane emissions from compressor stations as part of the air permitting process and reporting rule. The project will add 33.6 miles of new pipeline. However, before additional gas volumes transported reach the project facilities, they may travel through many interconnected pipelines from various upstream production areas. We cannot determine where the actual molecules of gas that will flow through the new facilities will come from or how far it will travel before going through the additional pipeline segments authorized here. Current estimates

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<sup>120</sup> EA at 63.

<sup>121</sup> The global warming potential is a ratio relative to carbon dioxide that is based on the properties of the greenhouse gas' ability to absorb solar radiation as well as the residence time within the atmosphere. *See* EA at 51.

of leakage from pipelines vary widely and there is no standard methodology to estimate leaks from segments of pipelines. Accordingly, we cannot predict the amount of methane leakage associated with transportation along a specific pipeline segment.

124. The Clean Air Council and James Rosenberg request that the EA address acute air pollution releases as a result of routine and non-routine blowdowns. Texas Eastern's air permit applications included assumed routine releases from each facility. Emissions associated with these activities were included in Table 17 of the EA. Each unplanned release has numerous unknown factors, which determine the amount of released pollutant. Texas Eastern must report any unplanned releases to Pennsylvania DEP for further evaluation based on the specific details of that event.

125. Commenters state that the EA fails to evaluate the project's impact of air emissions on public health, including acute exposures. Table 20 in the EA identifies the modeled results of the air quality impacts from emissions of criteria pollutants from each of the modified compressor stations. The EA compared the results to the EPA's NAAQS<sup>122</sup> showing that the emission impacts from the compressor stations were below the NAAQS and therefore, we believe there will be no impacts on public health from operation of the modified compressor stations.

126. Pennsylvania DEP asserts that 40 C.F.R. § 93.155(a) requires that the EPA and Pennsylvania DEP be provided 30 days to comment on the draft General Conformity assessment prior to its being included in the EA. We disagree. Commission staff performed a General Conformity Applicability (*de minimis*) analysis, pursuant to 40 C.F.R. § 193.153(b), to determine if the project's direct and indirect emissions exceeded the specified thresholds and required the development of a General Conformity Determination. The EA explains that the project would not exceed any of the applicability thresholds.<sup>123</sup> Therefore, the General Conformity regulations state in 40 C.F.R. § 193.153(c)(1) that the General Conformity requirements do not apply. This includes the requirement to prepare draft or final General Conformity Determinations and to issue them to EPA and Pennsylvania DEP for comment (which may occur concurrently with the NEPA process).

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<sup>122</sup> The EPA developed the NAAQS to provide public health protection (e.g., protection of sensitive populations such as asthmatics, children, and the elderly). The NAAQS include various standards over different time periods to protect the public from long-term and short-term exposures.

<sup>123</sup> EA at 58.

127. Pennsylvania DEP comments that the EA did not provide actual construction beginning and end dates, which are needed to estimate the General Conformity emissions. The EA states that it anticipates Texas Eastern to begin construction in November 2013, and operation in November 2014.<sup>124</sup> However, we note that the General Conformity applicability analysis conservatively assumed that all emissions would occur within one calendar year.

128. Pennsylvania DEP believes that 40 C.F.R. § 93.111 requires the use of the latest estimation methodology and models (i.e. MOVES2010b) for the General Conformity analysis. Pennsylvania DEP also states that the EA should provide specific make, model, year, and manufacturer for all vehicles, or base emissions calculations on the most conservative case emission factors for all vehicles. 40 C.F.R. § 93.111 is within the Transportation Conformity Regulations, which do not apply to this project. Under General Conformity, the requirement to use MOVES2010b occurs if the Commission develops a General Conformity Determination for use in the preparation or revision of a State Implementation Plan.<sup>125</sup> The General Conformity regulations do not specify a technique or methodology for calculating emissions for comparison with General Conformity applicability thresholds. However, the General Conformity applicability analysis followed the EPA's guidance document on General Conformity applicability. The EPA's guidance document states that emission studies may be based on a historical analysis of actions similar in size and scope and that the NEPA analysis may be used for the emission studies.<sup>126</sup>

## **J. Noise**

129. James Rosenberg states that the EA fails to address noise levels from the compressor stations during a blowdown or malfunction, and contends that noise impacts will worsen absent implementation of mitigation measures. The project includes modifications at four existing compressor stations. As a result of the project, a blowdown event may release additional volumes of gas, extending the length of gas venting time. However, the noise levels currently experienced during a blowdown will not change.

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<sup>124</sup> EA at 8.

<sup>125</sup> The EA and this order state that a General Conformity Determination is not required for the Project.

<sup>126</sup> EPA. *General Conformity Guidance: Questions and Answers*. July 13, 1994.

**K. Safety**

130. Several individuals, including Cyndi Kumor and Valerie Berg, express public safety concerns regarding a potential leak or incident while in operation. More specifically, one commenter states that the EA lacks a safety analysis of Texas Eastern's proposed flow velocity on its project.

131. The EA notes that the U.S. Department of Transportation (DOT) has the exclusive authority to promulgate federal safety standards for natural gas transportation.<sup>127</sup> The EA also states that the pipeline and aboveground facilities must be designed, constructed, operated, and maintained in accordance with the DOT Minimum Federal Safety Standards. The EA also provides a thorough analysis of pipeline accident data from the past 20 years. With Texas Eastern's commitment to DOT's regulations and the analysis in the EA, we agree with the EA's conclusion that pipelines continue to be a safe and reliable means of energy transportation and that the project will only represent a slight increase in risk to the nearby public.<sup>128</sup>

132. James Rosenberg requests that the EA provide the DOT Class location for the Uniontown Compressor Station and identify whether the facility is within a high consequence area. Tables 27 and 28 of the EA identify preliminary class locations and high consequence areas of the project's pipeline components. Texas Eastern will make final class location determinations and identify high consequence areas upon the final design of each project component in accordance with DOT's regulations. The Uniontown Compressor Station is not within a high consequence area.

133. Multiple commenters, including Carol Ann Donohoe, Karen Feridun, and Cindy Tricoski, referenced an incident at Texas Eastern's Bernville Compressor Station, and express concern over a general lack of communication regarding incidents and request further notification requirements be imposed on pipeline operators. The reported incident at the Bernville Compressor Station was unrelated to this project. However, the EA notes that DOT requires operators to have an emergency plan, which includes establishing and maintaining communications with local fire, police, and public officials.<sup>129</sup> Operators must also establish a continuing education program to enable the public and government officials to recognize a gas pipeline emergency and properly report it. Any further

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<sup>127</sup> EA at 74.

<sup>128</sup> EA at 78-82.

<sup>129</sup> EA at 77 and 78.

reporting requirements will be subject to DOT's exclusive authority to promulgate federal safety standards.

**L. Cumulative Impacts**

134. EPA notes that the cumulative impacts discussion limits the geographic area to exclude three project counties, which include compressor station modifications and thus ignores potential air impacts. While the EA lists the counties in which pipeline loops will be constructed for consideration of cumulative impacts, Table 33 of the EA includes counties in "Western Pennsylvania," an electric transmission line in Westmoreland County, Pennsylvania, and coal mining in "various counties" of Pennsylvania.<sup>130</sup> Also, the EA identifies Marcellus shale well permits and wells drilled for all of Pennsylvania.<sup>131</sup> The EA notes that operation of project facilities, Marcellus shale drilling activities, and other projects will have cumulative impacts to existing air emissions. However, each project must independently comply with federal, state, and local air regulations, which may require controls to limit the emissions of certain criteria or hazardous air pollutants.<sup>132</sup>

135. Sondra Wolferman raised several concerns about the impacts, including cumulative impacts, of pipeline construction in the Appalachian supply region of Pennsylvania and the "inadequacies of industry mitigation plans." As a result, the commenter states that the project will impact water quality, forest cover, biodiversity, and human health and well-being. The EA addresses each of the comments.<sup>133</sup> Specifically, the EA addresses cumulative impacts, which account for the incremental effects of the proposed project when added with other past, present, and reasonably foreseeable projects and actions in the general project area. The EA also addresses water quality and effects on forested vegetation, and finds that constructing and operating the pipeline facilities will not significantly affect these resources.

136. Commenters, including the Clean Air Council and the Delaware Riverkeeper Network, note concerns regarding potential future expansion and contend that the EA should include discussions and predictions about where future system upgrades will occur. The CEQ's implementing regulations for NEPA require the Commission to

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<sup>130</sup> EA at 82-84.

<sup>131</sup> EA at 85.

<sup>132</sup> EA at 88 and 89.

<sup>133</sup> EA at 26-29, 32-33, and 49-90.

evaluate reasonably foreseeable future actions.<sup>134</sup> Currently, no other proposals are before the Commission regarding other expansion projects affecting the relevant Texas Eastern pipelines. Texas Eastern is an open-access transporter and is likely interested in opportunities to expand its system, especially when prospective shippers would be willing to enter into long-term firm transportation commitments to support such expansions. However, the market dictates the location for these expansions, based on the location of expanding natural gas demand or the location of growing production, or both. If a particular location is in need of additional gas, other pipeline companies may seek to meet that demand by using existing excess capacity or expanding their systems. It is not possible for Texas Eastern or the Commission to accurately predict the locations of future pipeline expansions; we note that it is not uncommon for pipeline companies who have filed project proposals with the Commission to withdraw or downsize those proposed projects when anticipated markets disappear or fail to materialize.

137. Commenters note concerns with cumulative impacts on waterbodies; specifically, the EPA states the EA does not discuss where cumulative impacts on waterbodies would be the greatest and does not quantify the size or scope of these impacts. Cumulative impacts could occur in each watershed affected by the project. A quantification of the size of cumulative waterbody impacts was not included in the EA because measurable impacts resulting from past, present and reasonably foreseeable projects are unavailable and/or are unknown. Furthermore, although not described in the cumulative impacts section of the EA, the water resources section of the EA describes the scope of impacts on waterbodies as including flow, quality, and habitat characteristics.<sup>135</sup> The cumulative impacts section of the EA also states that project impacts on water resources will be greatest during construction.<sup>136</sup> Using standard and specialized construction techniques as specified in Texas Eastern's Erosion and Sediment Control Plan and Spill Prevention, Control, and Countermeasure Plan will minimize project impacts.

138. Commenters, including Cyndi Kumor and the Clean Air Council, note concerns about the Marcellus shale drilling, placement of gathering lines, and lack of local government involvement in siting. As mentioned in the EA,<sup>137</sup> the Commission's authority under the NGA and NEPA review requirements relate only to natural gas facilities that are involved in interstate commerce. The Commission does not have

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<sup>134</sup> 40 C.F.R. § 1508.7 (2013).

<sup>135</sup> EA at 26-29.

<sup>136</sup> EA at 87.

<sup>137</sup> EA at 8 and 84-85.

authority to regulate production or gathering activities. Other commenters state that the Commission staff failed to adequately address the impacts on soils, ground water, surface water, and wetlands, vegetation, wildlife, land use, socioeconomics, air quality, noise, and cumulative impacts of shale gas development on resources affected by the project. We disagree. The EA includes an analysis of the cumulative impacts of related past, present, and reasonably foreseeable activities in the project area. The EA describes the impacts of existing and pending jurisdictional natural gas pipelines, natural gas facilities associated with the project but that are not under the Commission's jurisdiction, unrelated projects, and development of the Marcellus shale.

### **M. Alternatives**

139. Commenters request that “green alternatives” or renewable energy alternatives be further considered. These types of energy alternatives, such as solar, wind, and geothermal were considered in the environmental analysis; however, these types of energy production are reliable in only certain regions of the United States and will not be environmentally preferable to the proposed project because the necessary infrastructure does not exist in the project area and will require construction of additional facilities to convert the energy to electricity, in addition to the electrical transmission lines required for transport. We conclude that renewable alternatives will not meet the requirements of the project.

140. The Delaware Riverkeeper Network states that that Texas Eastern has not led the way for conservation efforts as an alternative that would negate the need for the proposed project. Although, energy conservation has been promoted by federal, state, and local governments, conservation efforts to preserve energy alone will not meet the purpose of the project, and we have determined that it is not preferable to the proposed action.

141. Commenters, including the Delaware Riverkeeper Network and ConocoPhillips, have concerns with the analysis provided for the ConocoPhillips alternatives and state that the EA did not take a “hard look” at alternatives. We disagree.

142. NEPA requires the Commission to consider and disclose all significant aspects of the environmental impact of a proposal, but NEPA does not mandate particular results.<sup>138</sup> Under NEPA, agencies must take a “hard look” at the environmental impacts of a proposed action. However, in carrying out their NEPA responsibilities, agencies are

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<sup>138</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

governed by the rule of reason.<sup>139</sup> The range of alternative must be sufficient to permit a reasoned choice of alternatives; however, this range is within the agency's discretion.<sup>140</sup>

143. The EA evaluated three alternatives to the proposed project utilizing the CRP system. Those alternatives would result in additional greenfield construction, potential additional impacts on landowners and residential neighborhoods, and potential impacts on endangered species habitat. As discussed above and as we recently explained,<sup>141</sup> even if we were to accept arguments here that other alternatives are environmentally preferable, which we do not, neither NEPA nor Commission policy and precedent would require that we deny authorization of the TEAM 2014 Project. We find that the EA took a "hard look" by considering the alternatives in detail and explaining why none of the alternatives were selected.<sup>142</sup>

#### N. Conclusion

144. Based on the analysis in the EA, we conclude that if constructed and operated or abandoned in accordance with Texas Eastern's application and supplements, and in compliance with the Environmental Conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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

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<sup>139</sup> *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) (*NRDC v. Morton*).

<sup>140</sup> See 42 U.S.C. § 4332(2)(C)(iii) (2012). See also *North Carolina v. FPC*, 533 F.2d 702, 707 (D.C. Cir. 1976) (citing *NRDC v. Morton*, 458 F.2d 827).

<sup>141</sup> See *supra* PP 44-51; *Dominion Transportation, Inc.*, 143 FERC ¶ 61,148, at P 39 (2013); and *Millennium Pipeline Company L.L.C.*, 141 FERC ¶ 61,198, at P 29 (2012).

<sup>142</sup> We note that the alternatives proffered by ConocoPhillips incorporated the use of turnback capacity. As indicated above, ConocoPhillips has informed the Commission that it subsequently released that capacity to other shippers. Thus, the ConocoPhillips' alternatives are no longer feasible.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing the construction of the TEAM 2014 Project facilities as described in the application and this order, and subject to the Environmental Conditions in Appendix B.

(B) Permission and approval are granted to Texas Eastern to abandon facilities in place, as more fully described in the application, as supplemented, and in the body of this order.

(C) Texas Eastern shall notify the Commission within 10 days of the effective date of the abandonment of the facilities referenced in Ordering Paragraph (B).

(D) ConocoPhillips' April 5, 2013 protest and January 28, 2014 pleading, including its request for monetary restitution, are denied.

(E) Texas Eastern's proposed initial incremental recourse rate, the use of its existing system wide IT rates for interruptible services, and its proposed fuel use and electric power costs recovery mechanisms are approved.

(F) Texas Eastern must file actual tariff records setting forth its incremental recourse rates in accordance with section 154.207 of the Commission's regulations not less than 30 days nor more than 60 days prior to placing the TEAM 2014 Project in service.

(G) Texas Eastern shall file its negotiated rate agreements or a tariff record describing the essential elements of the agreements, not less than 30 days and not more than 60 days, prior to the commencement of service on the TEAM 2014 Project.

(H) Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.<sup>143</sup>

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<sup>143</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

(J) The late motions to intervene filed by Elizabethtown Gas and Karen Feridun are granted.

(K) ConocoPhillips' request for an evidentiary hearing is denied.

(L) Texas Eastern's and ConocoPhillips' answers are accepted as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

**Interventions**

**Docket No. CP13-84-000**

Atmos Energy Corporation  
Atmos Marketing LLC  
BG Energy Merchants, LLC  
Calpine Energy Services, L.P.  
Chevron, U.S.A., Inc.  
Clean Air Council  
ConocoPhillips Company  
Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc.,  
and Philadelphia Gas Works  
Delaware Riverkeeper Network  
Duke Energy Carolinas, LLC, Duke Energy Kentucky, Inc., Duke Energy Indiana, Inc.,  
and Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.,  
affiliates of Duke Energy Corporation  
Elizabethtown Gas\*  
EQT Energy, LLC  
Exelon Corporation  
ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation  
Feridun, Karen \*  
Hess Corporation  
Municipal Defense Group  
National Fuel Gas Distribution Corporation  
National Grid Gas Delivery Companies  
New Jersey Natural Gas Company  
NJR Energy Services Company  
Piedmont Natural Gas Company  
ProLiance Energy, LLC  
PSEG Energy Resources & Trade LLC  
Tennessee Valley Authority

\* Late intervention

## Appendix B

### Environmental Conditions for the TEAM 2014 Project Docket Nos. CP13-84-000

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Texas Eastern shall follow the construction procedures and mitigation measures described in its application and supplements, including responses to staff data requests and as identified in the EA, unless modified by this Order. Texas Eastern must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during Project construction and operation. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction.
3. **Prior to any construction**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps or sheets at a scale not smaller than 1:6,000 with station

positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps or sheets.

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

5. Texas Eastern shall file with the Secretary detailed alignment maps or 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 or 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, or aerial photographs. Each area must be approved in writing by the Director of OEP before **construction in or near that area**.

This requirement does not apply to route variations required herein or extra workspace allowed by FERC's Upland Erosion Control, Revegetation and Maintenance Plan or minor field realignments per landowner needs and requirements that 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:

- (i) implementation of cultural resources mitigation measures;
  - (ii) implementation of endangered, threatened, or special concern species mitigation measures;
  - (iii) recommendations by state regulatory authorities; and
  - (iv) 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**, Texas Eastern shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Eastern will implement the construction procedures and mitigation measures describe in its application and supplements (including responses to staff environmental information requests), identified in the EA and required by this Order;
- b. how Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned per spread 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 training and instructions Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Texas Eastern will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
  - (i) the completion of all required surveys and reports;
  - (ii) the mitigation training of onsite personnel;
  - (iii) the start of construction; and
  - (iv) the start and completion of restoration.

7. **Beginning with the filing of its Implementation Plan**, Texas Eastern shall file updated status reports prepared by the head EI with the Secretary **on a weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Texas Eastern's efforts to obtain the necessary federal authorizations;
- b. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

- c. a list of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions or 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; and
  - f. a description of any landowner or resident complaints that may relate to compliance with the requirements of this Order and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance and Texas Eastern's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Texas Eastern must receive written authorization from the Director of OEP **before placing the Project into service**. Such authorization will only be granted following a determination that right-of-way rehabilitation and restoration and other areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed or installed in compliance with all applicable conditions and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Texas Eastern has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Texas Eastern shall employ at least one EI per construction spread. The EI shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures 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 this 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 this Order, as well as any environmental conditions or permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
12. **During construction along the Perulack West Loop between mileposts (MP) 0.5 and 2.0 and on the Perulack East Loop between MPs 3.6 and 4.0**, Texas Eastern ensure that a qualified geologist experienced in landslides shall monitor excavations at these locations and provide status updates as necessary to environmental and construction inspectors for inclusion in Texas Eastern's weekly status reports.
13. **Prior to construction**, Texas Eastern shall file a Project-specific blasting plan with the Secretary for review and approval from the Director of OEP.
14. **Prior to construction of the Bernville Loop**, Texas Eastern shall file with the Secretary the results of the geophysical investigation for the first 2.3 miles of this facility for review and written approval by the Director of OEP. The investigation report shall include details of the findings and analysis of the impacts of construction on the karst surface features, groundwater, and the adjacent Schuylkill River. If karst features are identified along this segment, the report should include:
- a. locations of all suspected karst features plotted on an alignment sheet(s);
  - b. proposed mitigation to avoid any of the karst features;
  - c. proposed monitoring for Schuylkill River, nearby wells or springs in the area, as applicable, including the monitoring frequency and duration; and
  - d. provide a description of well and spring yield and water quality testing, as applicable, which should include at a minimum: total coliform bacteria, turbidity, total petroleum hydrocarbons, and volatile organic compounds.
15. Texas Eastern shall not begin construction activities **until**:
- a. the staff receives comments from the U.S. Fish and Wildlife Service (FWS) regarding the proposed action;
  - b. the staff completes formal consultation with the FWS, if required; and
  - c. Texas Eastern has received written notification from the Director of OEP

that construction or use of mitigation may begin.

16. **Prior to construction**, Texas Eastern shall file the results of any outstanding surveys for Pennsylvania-listed species and identify any additional mitigation measures developed in consultation with the applicable state agencies.
17. Texas Eastern shall defer construction and use of facilities and staging, storage, temporary work areas and new or to-be-improved access roads in Pennsylvania **until**:
  - a. Texas Eastern files supplemental survey reports for areas that access was not previously granted, any realignments or reroutes, extra work spaces, access roads, contractor yards, or other areas requiring survey, and the Pennsylvania State Historic Preservation Office's (SHPO) comments on the reports;
  - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
  - c. the Director of OEP reviews and approves all reports and plans and notifies Texas Eastern in writing that it may proceed with any treatment or construction.

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

18. **Prior to construction**, Texas Eastern shall file a Fugitive Dust Control Plan with the Secretary for review and written approval of the Director of OEP. The plan shall specify the precautions that Texas Eastern will take to minimize fugitive dust emissions from construction activities, including additional mitigation measures to control fugitive dust emissions of Total Suspended Particulates and particulate matter with an aerodynamic diameter less than or equal to 10 microns, such as:
  - a. watering the construction workspace and access roads;
  - b. providing measures to limit track-out onto the roads;
  - c. identifying the speed limit that Texas Eastern would enforce on unsurfaced roads;
  - d. covering open-bodied haul trucks, as appropriate;
  - e. clarifying that the EI has the authority to determine if/when water or a palliative needs to be used for dust control; and
  - f. clarifying the individuals with the authority to stop work if the contractor does not comply with dust control measures.

19. Texas Eastern shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Uniontown Compressor Station in service. If a full power load condition noise survey is not possible, Texas Eastern shall file an interim survey at the maximum possible power load **within 60 days** of placing the Uniontown Compressor Station in service and file the full load survey **within 6 months**. If the noise attributable to the operation of the modified Uniontown Compressor Station at full or interim power load conditions exceeds a day-night sound level (L<sub>dn</sub>) of 55 A-weighting filter decibel (dBA) at any nearby sensitive areas (NSA), Texas Eastern shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Texas Eastern shall confirm compliance with the above requirement by filing a second full power noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
  
20. Texas Eastern shall file noise surveys with the Secretary **no later than 60 days** after placing the modified Delmont and Kosciusko Compressor Stations in service. If full power load condition noise surveys are not possible, Texas Eastern shall file interim surveys at the maximum possible power load **within 60 days** of placing the modified Delmont and Kosciusko Compressor Stations in service and file the full load surveys within 6 months. If the noise attributable to the operation of the modified compressor station at full or interim power load conditions exceeds existing noise levels at any nearby NSAs that are currently at or above an L<sub>dn</sub> of 55 dBA, or exceeds 55 dBA L<sub>dn</sub> at any nearby NSAs that are currently below 55 dBA L<sub>dn</sub>, Texas Eastern shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Texas Eastern shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
  
21. Texas Eastern shall make all reasonable efforts to ensure its predicted noise levels from the Armagh and Entriiken Compressor Stations are not exceeded at nearby NSAs and a file full power load noise surveys showing this **no later than 60 days** after placing the modified Armagh and Entriiken Compressor Stations in service. If full power load condition noise surveys are not possible, Texas Eastern shall file interim surveys at the maximum possible power load **within 60 days** of placing the Armagh and Entriiken Compressor Stations in service and file the full power load surveys **within 6 months**. If the noise attributable to the operation of all the equipment at either the Armagh and Entriiken Compressor Stations at interim or full horsepower load conditions exceeds an L<sub>dn</sub> of 55 dBA at any nearby NSAs, Texas Eastern shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date.

Texas Eastern shall confirm compliance with this requirement by filing a second full power noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.