

146 FERC ¶ 61,174  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

East Tennessee Natural Gas, LLC

Docket No. CP13-534-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued March 12, 2014)

1. On August 14, 2013, East Tennessee Natural Gas, LLC (East Tennessee), filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for a certificate authorizing East Tennessee to construct and operate an approximately 6.5-mile-long, 16-inch-diameter mainline extension and necessary facilities to provide natural gas service to Eastman Chemical Company's (Eastman) existing manufacturing facility (Eastman Plant) in Sullivan County, Tennessee. The project, known at the Kingsport Expansion Project (Kingsport Project), will enable East Tennessee to provide up to 61,000 Dekatherms per day (Dth/d) of firm transportation service to Eastman.

**I. Background and Proposal**

2. East Tennessee is a natural gas company with a pipeline system that extends from central Tennessee through Virginia to North Carolina and Georgia. East Tennessee proposes to construct the Kingsport Project to provide natural gas service to the existing Eastman Plant.

3. East Tennessee requests authority to: (1) construct and operate an approximately 6.5 mile, 16-inch diameter mainline extension (Eastman Mainline Extension) in Sullivan County, Tennessee, to the Eastman Plant, including a new meter station and appurtenant facilities; (2) construct and operate an approximately 3.3 mile, 16-inch-diameter loop of the existing Nora Line in Washington County, Virginia (Nora Loop); (3) replace approximately 5.7 miles of existing 8-inch-diameter pipeline with 24-inch-diameter pipeline in Washington and Smyth Counties, Virginia, extending eastward from the Glade Spring compressor station discharge (Glade Springs Relay); (4) install piping modifications at the existing Glade Spring compressor station; and (5) install clean-burn equipment on one reciprocating engine and building ventilation modifications at the Fordtown compressor station in Sullivan County, Tennessee.

4. East Tennessee held a binding open season and a reverse open season for the Kingsport Project from September 17, 2012, through September 28, 2012. As a result of the open seasons, East Tennessee and Eastman have executed a precedent agreement for 61,000 Dth/d of firm transportation service under Rate Schedule FT-A to a delivery point at the Eastman Plant for a primary term of 25 years from the service commencement date.

5. East Tennessee proposes to establish an initial incremental recourse rate and an incremental fuel rate for firm transportation service on the Kingsport Project under Rate Schedule FT-A (Kingsport) to recover the costs associated with the expansion facilities. East Tennessee states that the Commission has previously approved initial incremental rates for service on new discrete facilities under Rate Schedule FT-A under similar circumstances.<sup>1</sup> Eastman has elected to pay a negotiated rate for service utilizing the expansion capacity.

## **II. Notice, Intervention, and Comments**

6. Notice of East Tennessee's application was published in the *Federal Register* on August 30, 2013 (78 Fed. Reg. 53,744). Timely interventions were filed by Atmos Energy Corporation, Atmos Energy Marketing LLC, Duke Energy Carolinas, LLC, a subsidiary of Duke Energy Corporation, Public Service Company of North Carolina, Tennessee Valley Authority, Piedmont Natural Gas Company, Inc., and the East Tennessee Group (ETG).<sup>2</sup>

7. ETG, an ad hoc, voluntary association of jurisdictional customers of East Tennessee, each of which is engaged in the retail distribution of natural gas, comments that it reserves all rights to oppose any future effort by East Tennessee to roll the costs of the project into its system rates or to seek any adjustment to its rates on account of the negotiated rate granted to Eastman.<sup>3</sup>

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<sup>1</sup> Citing *East Tennessee Natural Gas, LLC*, 98 FERC ¶ 61, 331 at 62,396 (2002) (Patriot Project); *East Tennessee Natural Gas, LLC*, 96 FERC ¶ 61,054 (2001) (Gateway Project); *East Tennessee Natural Gas, LLC*, 92 FERC ¶ 61,165 (2000) (Rocky Top Expansion Project).

<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. See 18 C.F.R. § 385.214 (2013).

<sup>3</sup> The ETG for this proceeding consist of: Appalachian Natural Gas Distribution Company, Athens Utilities Board, Bridgeport Utilities, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Etowah Utilities Gas Department, Fayetteville Public Utilities, Gallatin Natural Gas System, Harriman Utility

(continued...)

8. Comments supporting the application were filed by State of Tennessee Lieutenant Governor Ron Ramsey, and Tennessee State Representatives John C. Lundberg, 1<sup>st</sup> District and Mike Harris, 9<sup>th</sup> District.

### **III. Discussion**

9. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

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

10. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>4</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.

11. Under this policy, the threshold requirement for an applicant proposing a new project 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

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Board, Hawkins County Gas Utility District, Knoxville Utilities Board, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utility Gas Department, Madisonville Gas System, Marion Natural Gas System, Middle Tennessee Natural Gas Utility District, Mt. Pleasant Gas System, Oak Ridge Utility District, Powell Clinch Utility District, Rockwood Water & Gas, Sevier County Utility District, Sweetwater Utilities Board and Unicoi County Gas Utility District.

<sup>4</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).

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

12. As noted above, the threshold requirement under the Certificate Policy Statement is that the pipeline must be prepared to financially support the project without relying on subsidization from existing shippers. The Commission has generally determined that where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>5</sup> East Tennessee is proposing to recover project costs through an incremental recourse rate and an incremental fuel percentage that will be applicable to shippers on the Kingsport Project.<sup>6</sup> Therefore, the project will not require any subsidization from existing customers.

13. Next, we find that the project will have no adverse effects on service to East Tennessee's existing customers. The project facilities will enable East Tennessee to provide the new service to Eastman while maintaining service to its existing customers. Likewise, the project will not adversely affect existing pipelines in the market and their captive customers. The service to be provided by East Tennessee will not displace existing service on any other pipeline. Rather, Eastman is converting existing boilers at its plant from coal-fired to natural-gas fired operations and seeking new service from East Tennessee. In addition, no pipelines or their customers have filed adverse comments regarding the proposal.

14. We find the Kingsport Project will have minimal impacts to landowners and surrounding communities because East Tennessee has or expects to obtain voluntary easements for the 4.8 miles of new pipeline that will be installed within new rights-of-way. The remaining 1.7 miles of the extension, as well as the 3.3-mile-long Nora Loop and the replacement pipeline, will be constructed within existing rights-of-way. Because construction of these facilities and the modifications to be done at the compressor stations

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<sup>5</sup> See *Transcontinental Gas Pipe Line Company, LLC*, 98 FERC ¶ 61,155 (2002).

<sup>6</sup> East Tennessee's proposed incremental recourse rate of \$29.725 per dekatherm exceeds the currently applicable system rate.

will be installed within existing rights-of-way, they should have minimal impacts on landowners and communities. Finally, as discussed in the Environmental Assessment (EA), East Tennessee successfully addressed the concerns of the sole landowner who commented on the Kingsport Project.

15. The proposed Kingsport Project will provide the necessary pipeline infrastructure to provide Eastman, which has signed a precedent agreement for long-term service, with firm transportation service to supply the natural gas needs of the Eastman Plant. Based on the benefits of the project and the minimal adverse impact on existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find that the project, subject to the environmental discussion below and conditions of this order, is required by the public convenience and necessity.

### **B. Abandonment**

16. As part of its Kingsport Project, East Tennessee proposes to abandon 5.7 miles of existing 8-inch diameter pipeline and replace it with 24-inch pipeline. Approximately 335 feet of 8-inch diameter pipeline originating at East Tennessee's existing Glade Spring compressor station and extending to the east will be abandoned in place. The abandonment of the pipeline segment is justified pursuant to section 7(b) of the NGA because it serves the purpose of the Kingsport Expansion. The abandonment will not have any adverse effects on East Tennessee's customers, who will continue to receive service, since the abandoned pipeline will be replaced with a larger-diameter pipeline. For these reasons, we find that the public convenience or necessity permits the abandonment, including the abandonment in place of 335 feet of 8-inch diameter pipeline.

### **C. Rates**

17. For the Kingsport Project, East Tennessee proposes to establish an initial incremental recourse rate for firm transportation service under Rate Schedule FT-A (Kingsport). East Tennessee calculated its proposed monthly reservation rate of \$29.725 per Dth by dividing the annual incremental cost of service of \$21,758,342 by the annual transportation quantity of 732,000 Dth (the monthly 61,000 Dth multiplied by 12 months). East Tennessee uses a pre-tax rate of return of 16.0 percent, which is the rate of return reflected in the settlement of East Tennessee's rate case in Docket No. RP91-204<sup>7</sup> and a depreciation rate of 2.0 percent, which is the depreciation rate reflected in the settlement of its rate case in Docket No. RP05-672.<sup>8</sup> East Tennessee states that it will

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<sup>7</sup> *East Tennessee Natural Gas, LLC*, 59 FERC ¶ 61,355 (1992).

<sup>8</sup> *East Tennessee Natural Gas, LLC*, 113 FERC ¶ 61,079 (2005).

maintain a separate record of capital costs for the Kingsport Project in its books and accounts.

18. It is appropriate to charge an incremental recourse rate for a pipeline expansion when the incremental rate is higher than the existing system rate. In this case, the incremental rate of \$29.725 per Dth exceeds the existing applicable general system rate of \$6.680 per Dth. Thus, we approve East Tennessee's proposal to charge an incremental rate for the Kingsport Project. The Commission requires pipelines to isolate the costs associated with incremental facilities and to maintain separate books and records, so that parties during a rate case can examine such records to ensure they are not subsidizing a facility from which they are not receiving service.<sup>9</sup>

19. To ensure that all the parties to a future rate proceeding will have full knowledge of the costs and revenues attributable to the project, we will require East Tennessee to account for the construction and operating costs and revenues separately in accordance with section 154.309 of the Commission's regulations.<sup>10</sup> 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 proceedings and the information must be provided consistent with Order No. 710.<sup>11</sup>

20. East Tennessee states that Eastman has elected to pay a negotiated rate for its Kingsport Project service. East Tennessee must file the negotiated rate agreement, or a tariff record setting forth the essential terms of the negotiated rate agreement associated

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<sup>9</sup> *Dominion Cove Point LNG, LP*, 120 FERC ¶ 61,213, at P 18 (2007); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235, at P 23 (2007); *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 115 (2006); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303, at P 36 (2003); and *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275, at P 37 (2002).

<sup>10</sup> 18 C.F.R. § 154.309 (2013).

<sup>11</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

with this project, in accordance with the Commission's negotiated rate policies<sup>12</sup> and our Alternative Rate Policy Statement.<sup>13</sup>

21. The Commission approves East Tennessee's proposed incremental shrinkage factor of 0.60 percent, which is its current lost and unaccounted for (LAUF) rate for system customers. East Tennessee states that the Kingsport Project does not result in incremental fuel use so only LAUF is charged to the customer.

22. East Tennessee is not seeking rolled-in rates nor has it provided any long-term revenue analysis, but seeks to reserve the right to do so in the future as part of a general rate case proceeding. ETG filed comments stating that it reserves its rights to oppose any efforts by East Tennessee to roll-in the costs of the Kingsport Project or to seek adjustment to its rates on account of the negotiated rate granted to Eastman.

23. The Commission is approving an incremental recourse rate that is designed to recover the costs of the project. To the extent that East Tennessee seeks to roll in the costs of the Kingsport Project in a future NGA general section 4 rate case proceeding, it must demonstrate that such roll-in will not result in any subsidization by existing customers.<sup>14</sup> Any party, including EGT, will have the opportunity to object to the proposal in the rate case.

#### **D. Environmental Analysis**

24. Commission staff began its environmental review of the Kingsport Project following approval for East Tennessee to use the pre-filing process on January 23, 2013, in Docket No. PF13-6-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Kingsport Expansion Project and Request for Comments on Environmental Issues* (NOI) on March 20, 2013. The NOI was mailed to interested parties including federal, state, and local officials;

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<sup>12</sup> *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>13</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

<sup>14</sup> *See Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009) and *Maritimes & Northeast Pipeline, L.L.C.*, 95 FERC ¶ 61,077 (2001).

agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

25. We received comments in response to the NOI from the U.S. National Park Service and one landowner. The National Park Service stated it had no concerns with the project, and the landowner's expressed concern was limited to potential impacts as a result of activities along a proposed access road on his property.

26. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for East Tennessee's proposal. 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, and alternatives. The EA was placed into the public record on November 29, 2013. The EA addressed all substantive comments received in response to the NOI, which are summarized below.

27. The landowner's scoping comment on the proposed use of an access road on his property concerned potential impacts on surface waters, well water supplies and cultural resources. In response to the landowner's concerns, East Tennessee proposed an alternative access road that was agreeable to the landowner. East Tennessee incorporated the alternative road into the Kingsport Project as proposed.

28. As stated in the EA, the Kingsport Project will temporarily impact about 367 acres. However, East Tennessee will install the Nora Loop and Glade Spring Relay facilities entirely within its existing permanent right-of-way. Similarly, approximately 1.7 miles of the Eastman Mainline Extension will be installed within its existing permanent right-of-way. The only new permanent right-of-way will be along a 4.8-mile-long section of the Eastman Mainline Extension. As a result, East Tennessee will retain only about 31.3 acres as new permanent right-of-way. To further minimize project impacts, East Tennessee will implement its Project-specific Erosion and Sediment Control Plan (E&SCP) and its Spill Prevention, Containment, and Countermeasure Plan (SPCC Plan) during construction and restoration activities. These plans include measures to minimize erosion, runoff into waterbodies, and outline measures for spill prevention and cleanup. The E&SCP and SPCC Plan are described in the EA and were reviewed by our staff. The EA concludes that project impacts, including impacts from use or improvement of access roads, will not be significant.<sup>15</sup> There were no comments filed to the EA.

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<sup>15</sup> EA at 24.

29. Based on the analysis in the EA, we conclude that if constructed, abandoned, and operated in accordance with East Tennessee'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.

30. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>16</sup>

31. 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,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing East Tennessee to construct and operate the Kingsport Project, as described and conditioned herein, and as more fully described in the application.

(B) East Tennessee is granted permission and approval under NGA section 7(b) to abandon the pipeline segment as described in this order and more specifically in the application.

(C) East Tennessee shall notify the Commission within 10 days of the date of the abandonment of the facilities.

(D) The certificate issued in Ordering Paragraph (A) is conditioned on East Tennessee's:

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<sup>16</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); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (1) completion of construction of the proposed facilities and making them available for service within one year of the date of this order pursuant to section 157(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions in the Appendix to this order, and
- (4) execution of a firm service agreement equal to the level of service and in accordance with the terms of service presented in its precedent agreement before commencement of service.

(E) East Tennessee's initial incremental recourse rate for firm transportation service under Rate Schedule FT-A is approved, as more fully discussed above.

(F) East Tennessee shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(G) East Tennessee must file no earlier than 60 days, and no later than 30 days, prior to the proposed facilities in service date, an actual tariff record with the incremental recourse rate, an executed copy of the negotiated rate agreement, or a tariff record setting forth the essential terms of this agreement.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix**  
**East Tennessee Natural Gas, LLC**  
**Docket No. CP13-534-000**  
**Environmental Conditions**

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

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

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

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

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

This requirement does not apply to extra workspace allowed by East Tennessee's Erosion and Sediment Control Plan, and/or minor field realignments per landowner needs and requirements, which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- (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 would affect sensitive environmental areas.
6. **At least 60 days before construction begins,** East Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. East Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how East Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Commission order;
  - b. how East Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned per 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 locations and dates of the environmental compliance training and instructions East Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the proposed Project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of East Tennessee's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) East Tennessee will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar Project scheduling diagram), and dates for:
    - (i) the completion of all required surveys and reports;
    - (ii) the environmental compliance 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**, East Tennessee shall file updated status reports with the Secretary **on a biweekly 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 East Tennessee's efforts to obtain the necessary federal authorizations;
  - b. the construction status of each segment or spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by East Tennessee from other federal, state or local permitting agencies concerning instances of noncompliance, and East Tennessee's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of Project facilities**, East Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. East Tennessee 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 rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, East Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions East Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the proposed Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. East Tennessee 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 any necessary Section 7 consultation with the FWS; and
  - c. East Tennessee has received written notification from the Director of OEP that construction or use of mitigation may begin.
12. East Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Engine 1A at the Fordtown Compressor Station in service. If a full power load condition noise survey is not possible, East Tennessee shall file an interim survey at the maximum possible power load **within 60 days** of

placing the Fordtown Compressor Station in service and file the full load survey **within 6 months**. If the noise attributable to the operation of the entire station at full or interim power load conditions exceeds existing noise levels at any nearby noise sensitive areas, East Tennessee 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. East Tennessee 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.