

148 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Gas Transmission, LLC

Docket No. CP14-23-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued July 17, 2014)

1. On November 25, 2013, Enable Gas Transmission, LLC (Enable)¹ filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity for its proposed Central Arkansas Pipeline Enhancement Project (Central Arkansas Project).² Enable requests authorization to abandon certain facilities, by sale and in place, and to construct and operate certain facilities to replace, in part, the abandoned capacity and maintain service to existing customers.

2. As discussed below, the Commission will grant the requested authorizations with appropriate conditions.

I. Background and Proposal

3. Enable is a natural gas company, as defined by section 2(6) of the NGA, engaged in the interstate transportation of natural gas.³ Enable, on behalf of various shippers, transports and delivers natural gas to distributors for resale and ultimate public consumption, to industrial customers for their own use and consumption, to gas-fired power generators, and to third-party pipeline interconnects located in the states of Arkansas, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

¹ Enable was formerly CenterPoint Energy Gas Transmission Company. Application at n. 1.

² 15 U.S.C. § 717f(b), (c) (2012); 18 C.F.R. pt. 157 (2013).

³ 15 U.S.C. §717(a)(6) (2012).

4. Enable states that the Central Arkansas Project consists of abandoning and replacing certain facilities utilized to provide natural gas transportation service to the towns of Conway, Mayflower, Maumelle, North Little Rock, and Little Rock, in Pulaski and Faulkner Counties, Arkansas. The Central Arkansas Project includes abandoning in place approximately 21.7 miles at the eastern end of Enable's 10-inch diameter Line B pipeline and associated facilities.⁴ Enable also proposes to abandon by sale to an affiliated distribution company, CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Arkansas Gas (Arkansas Gas), an approximately 12.4-mile long segment of Enable's 12-inch diameter Line BT-14.⁵ Since Enable is proposing to abandon these segments of Lines B and BT-14, it also proposes to abandon the three lines interconnecting these segments of Lines B and BT-14: the 1,024-foot long Line BT-19, the 797-foot long Line BM-1, and the 2,000-foot long Line BM-21.⁶

5. Enable states that over the last several decades since the original Line B and Line BT-14 were constructed, development has resulted in residential, commercial, and industrial encroachment on the pipelines in the area. Furthermore, according to Enable, the repurposing and realignment of its pipelines will allow it to more reliably operate its system in the project area, while also allowing for additional pipeline capacity to meet potential future demand.

6. The new facilities that Enable proposes to construct consist of: (1) about 28.5 miles of 12-inch diameter pipeline, with a maximum allowable operating pressure (MAOP) of 901 pounds per square inch gauge (psig) (new Line BT-39); (2) about 230 feet of 4-inch diameter pipeline (new Line BT-40) off Line BT-39; (3) about 1,400 feet of 4-inch diameter pipeline (new Line BT-41) off new Line BT-39; (4) and appurtenant facilities. Enable's proposed facilities will allow it to retire the low pressure (500 psig MAOP), 21.7-mile long segment of 10-inch diameter pipeline at the eastern end of Line B and sell the 12.4-mile long segment of Line BT-14 to Arkansas Gas for incorporation into its local distribution system.

⁴ Line B was originally certificated in 1943 and currently consists of 86 miles of 10-inch diameter pipeline used primarily to deliver natural gas to distribution systems in Arkansas. *See Arkansas Louisiana Gas Company*, 3 FPC 910 (1943).

⁵ Line BT-14 was originally certificated in 1988 and consists of 129 miles of 12-inch diameter pipe transporting natural gas from the western side of Arkansas, near Fort Smith, eastward, delivering gas to several cities along the way. *See Arkla Energy Resources*, 44 FERC ¶ 61,020 (1988).

⁶ Line BT-19 would be sold to Arkansas Gas. Lines BM-1 and BM-21 would be retired in place.

7. Enable's proposed facilities will be able to provide higher delivery pressures than the pipeline facilities that are being replaced, will include overpressure protection, and include pig launcher and receiving facilities for maintenance.⁷ Also, the construction of the new 12-inch diameter Line BT-39 replacement pipeline will create about 9.74 million cubic feet (MMcf) per day of incremental capacity, increasing the current capacity from 22.146 MMcf per day to 31.926 MMcf per day.⁸ Enable acknowledges that currently there is no identified incremental market for the additional capacity.⁹

8. Enable estimates that the capital cost of the Central Arkansas Project will be about \$55,215,132, which will be financed by available funds and short-term borrowing. Enable did not specifically state how it proposes to recover the cost of these facilities in its rates to its customers and this is discussed below.

II. Notice and Interventions

9. Notice of Enable's application was published in the *Federal Register* on December 18, 2013 (78 Fed. Reg. 76,603). The notice set January 2, 2014, as the deadline for filing motions to intervene and comments. Arkansas Public Service Commission filed a notice of intervention.¹⁰ Atmos Energy Corporation; Calpine Energy Services, L.P.; Arkansas Gas; Laclede Gas Company; and Trans Louisiana Gas Pipeline, Inc. filed timely, unopposed motions to intervene.¹¹

10. William C. Adkisson filed comments in opposition on behalf of landowners Julie Gillespie Adkisson (Adkisson); Faulkner Properties, Inc. (Faulkner); Harding Crafton Investment Properties, LLC (Crafton); Rush-Hal Development, LLC (Rush-Hal); and 4JM, Inc. (4JM). These landowners own land in the vicinity of the Central Arkansas Project and question the proposed location of the new facilities. The issues raised by the commenters were addressed in the environmental assessment and are further discussed below.

⁷ Application at 6 and 8.

⁸ Enable's April 8, 2014 Response, response to data request number 1A.

⁹ *Id.*

¹⁰ Rule 214 of the Commission's Rules of Practice and Procedure states that any state commission is a party to any proceeding upon filing a timely notice of intervention that proceeding. 18 C.F.R. § 385.214(a)(2) (2013).

¹¹ 18 C.F.R. § 385.214(a)(3) (2013). Timely, unopposed motions to intervene are granted by operation of Rule 214. 18 C.F.R. § 385.214(c) (2013).

III. Discussion

11. Since the facilities to be abandoned have been used to transport natural gas in interstate commerce subject to the Commission's jurisdiction and the proposed replacement facilities will be used for jurisdictional service, the proposed abandonment, and construction and operation of facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹²

A. Abandonment

12. Section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the present or future public convenience or necessity.¹³ Enable requests authority to: (1) abandon in place about 21.7 miles of its Line B, to be replaced by new Line BT-39 and other facilities, as described above; and (2) to abandon by sale to Arkansas Gas, a 12.4 mile segment of its 12-inch diameter Line BT-14 and associated facilities.

13. Enable states that its proposed abandonment and construction of replacement facilities is to ensure the safe and reliable operation of this portion of its pipeline system. In this regard, Enable explains that its system in this area includes aging infrastructure, and since the original construction of Line BT-14 and Line B, residential, commercial, and industrial development in this area has caused significant encroachment on the pipelines. The segment of Line BT-14 that Enable proposes to abandon by sale to Arkansas Gas is located within the city of Conway and traverses various industrial developments, multiple subdivisions, golf courses, the University of Central Arkansas campus, and the Conway airport. Consequently, Enable states that it operates this segment of Line BT-14 at a lower pressure than the line's certificated MAOP.¹⁴ According to Enable, customers will benefit from the transfer of ownership of Line BT-14 because Arkansas Gas will incorporate this segment into its existing low-pressure distribution system. The 21.7-mile long segment at the end of Line B was also originally constructed prior to the area along that route becoming highly developed. Replacement of this segment of Line B with the proposed Line BT-39 along a roughly parallel route further from highly developed areas will allow Enable to better serve its customers in the

¹² 15 U.S.C. § 717f (2012).

¹³ 15 U.S.C. §717f(b) (2012).

¹⁴ Enable states that the certificated MAOP of Line BT-14 is 901 psig; however, Enable must operate the pipeline at a reduced pressure of 545 psig going through the city of Conway. *See* Application at 4.

project area by replacing the aging infrastructure and remediating encroachment issues. Enable states that Line B will remain in service until the replacement pipeline is constructed and becomes operational; therefore, no service will be impacted by the abandonment. Further, no party opposes the abandonment.

14. Enable will be required to abandon the facilities which are to be retired in place in accordance with the environmental data Exhibits in Volumes I through IV of its application and in compliance with all applicable environmental and safety regulations. In view of these considerations, and since there will be no degradation of service due to the replacement, we find that the proposed abandonments are permitted by the public convenience or necessity.

B. Certificate Policy Statement

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate the construction of significant new pipeline facilities.¹⁵ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal in evaluating applications to construct pipeline facilities 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.

16. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, 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

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

17. As discussed above, the threshold, no subsidy requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The Certificate Policy Statement provides that increasing the costs to existing customers to pay for projects designed to improve reliability or flexibility of service for the existing customers is not a subsidy.¹⁶ Enable states that approximately \$54 million of the total projected costs to construct replacement pipeline BT-39 are attributable to replacing the existing capacity of the portion of Line B that will be abandoned in place. Based on Enable's representations, we find that the no subsidy requirement has been met for the project costs that are attributable to replacement of the existing capacity. However, Enable has proposed to replace the 21.7-mile segment of 10-inch diameter pipe at the end of its Line B with 12-inch diameter pipe. The use of larger diameter replacement pipe will result in an incremental increase in capacity on this portion of Enable's system for which Enable has not identified any current market. As discussed further below, if Enable also seeks rolled-in rate treatment in a future rate case for the costs associated with the additional capacity that will result from the use of 12-inch diameter pipe to replace the existing 10-inch diameter pipe, Enable will have the burden of demonstrating that rolled-in rate treatment for the additional costs would not result in subsidization by customers that do not need the additional capacity.

18. There is no evidence that the proposal will have any adverse effects on the quality of Enable's existing services to its customers. As discussed in the abandonment section above, Enable's proposal to construct replacement facilities in another location will ensure that it is able to continue providing its existing services and allows us to find that the public convenience and necessity permit Enable's abandonment of the existing facilities. Further, since the project will not result in the displacement of any existing service on any other pipeline, the project will not adversely affect the captive customers of any other pipeline. In addition, no existing shippers or other pipelines or their customers filed adverse comments regarding the proposal.

19. On January 13, 2014, William C. Adkisson, on behalf of landowners Adkisson, Faulkner, Crafton, Rush-Hal, and 4JM, filed with the Commission comments in opposition to the proposed location of a portion of the proposed 28.5-mile long Line BT-39. These landowners assert that the proposed route will dramatically impede the pace, and limit the potential density, of real estate development in their area. The landowners argue that the route of the proposed line is not only poorly located and planned, but that it

¹⁶ See Certificate Policy Statement, 88 FERC at 61,746, n.12.

does not represent a long-term fix to the encroachment issue, which Enable cites as grounds for the proposal, since the new facility will also eventually be encroached upon as the result of development along the proposed relocation route. Also, the landowners oppose the land price offered by Enable. For these reasons, the landowners request that the proposed pipeline relocation route be rejected, and that the Commission require Enable to redesign the location to a route which will generally avoid areas that likely will become developed and densely populated.

20. In response to the landowner comments, Enable acknowledged that the landowners' properties would be affected by the proposed Line BT-39 route.¹⁷ However, as explained further in the environmental section below, Enable states that the proposed route was chosen with stakeholder involvement and after an analysis of alternatives. While the proposed route does impact several landowners, the route of Line BT-39 was designed to follow Highway 319 and to follow the property lines of affected parcels as closely as possible to minimize any adverse impacts. Furthermore, Enable states that there is no active development of lands owned by these landowners.¹⁸ Lastly, Enable states that it is currently negotiating easements with the affected landowners to include compensation for loss of use during construction, damage done during construction, and impediments on the use of the land that will continue to be subject to the pipeline easement after construction.

21. In view of these considerations, we find that Enable has satisfied the Certificate Policy Statement's requirement that pipeline companies seek to minimize economic impacts on landowners and the need to rely on eminent domain. Landowners do not have to enter into easement agreements voluntarily if they do not believe the agreements provide for adequate compensation. However, if Enable and the landowners are unable to negotiate easement agreements, Enable may initiate eminent domain proceedings in

¹⁷ Enable states that Rush-Hal would not be affected by the construction of the facilities because the Centennial Valley Country Club, owned by Rush-Hal, lies along the existing Lines B and BT-14, which are proposed for retirement and transfer. See Enable's February 7, 2014 Response to Data Request number 3.

¹⁸ Enable states that of the four properties, only the Faulkner property had been plotted for subdivision in 2005, but has not since been developed. *Id.* Nonetheless, as further discussed in the environmental section below, Enable has acknowledged the potential for increased residential development in the project area by proposing a construction plan that is designed for a developed location, despite the current undeveloped nature of the properties where the pipeline crosses the Adkisson, Faulkner, Crafton, and 4JM properties.

which a court will determine the fair compensation landowners will receive for the use of their lands.

22. Based on the benefits of the project and minimal adverse impacts on existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find that the project, subject to the environmental discussion below, is consistent with the Certificate Policy Statement and is required by the public convenience and necessity, as conditioned in this order.

C. Incremental Capacity, Initial Recourse Rates, and Cost Allocation

23. Enable states that its proposed Central Arkansas Project to replace existing facilities, at an estimated cost of \$55,215,132 million, is needed to ensure the safe operation of its system and maintain reliable service, as well as anticipate future demand for additional transportation service. The construction of the new 28.5-mile long, 12-inch diameter Line BT-39 replacement pipeline will create about 9.74 MMcf per day of incremental capacity. Enable acknowledges that it has not identified any current market or demand for this incremental capacity.

24. The Commission will require Enable to use its system rates as the maximum recourse initial rates for the sale of any incremental capacity created by the project. Our authorization for Enable to use its system rates as initial rates for services using the additional capacity created by the replacement project does not constitute a finding supporting a presumption that Enable should be allowed in a future rate case to roll the costs associated with the incremental capacity into its systems rates. Of the approximately \$55 million total projected costs to construct the replacement pipeline facilities, Enable identified about \$1 million as being attributable to its proposal to use 12-inch diameter pipe to replace the existing 10-inch diameter pipe.¹⁹ Commission staff asked Enable how it intends to recover the additional costs that will result from using larger diameter replacement pipe, but Enable did not respond directly to the question. Rather, Enable responded that the additional \$1 million in costs to replace the existing 10-inch diameter line with a 12-inch diameter line would have an insignificant impact on Enable's system-wide rates, while the increased pipe size will have system benefits, such as maintenance efficiencies and increased delivery pressures.²⁰ The Commission interprets Enable's response as an intention to seek rolled-in rate treatment in its next general section 4 rate case based on system benefits for the additional \$1 million in plant cost that will result from the use of larger diameter replacement pipe. However, the new

¹⁹ Enable's April 8, 2014 Response, response to data request number 2.

²⁰ *Id.*, response to data request number 3.

Line BT-39 pipeline facilities will replace only the last 21.7 miles of Enable's Line B currently used to provide service for Enable's affiliate Arkansas Gas, which owns the local distribution systems in the towns served by this portion of Enable's system. Enable acknowledges that neither Arkansas Gas nor any other customer has requested additional service that would utilize any of the incremental capacity that will be created by using larger diameter pipe to construct the new Line BT-39 to replace the final segment of Enable's Line B. We find that Enable has not provided evidence sufficient to support us issuing a presumption in this proceeding that there will be no subsidization by existing customers if rolled-in rate treatment for the additional costs of using larger diameter replacement pipe is granted in a future rate case.

25. Therefore, when Enable seeks in a future rate case to recover the costs of its Central Arkansas Project, there will be a presumption of rolled-in rate treatment only for the costs associated with the amount of existing capacity replaced by the project. If Enable seeks rolled-in rate treatment for its costs associated with the incremental capacity, Enable will have the burden of showing either that the costs associated with the additional capacity created by the use of larger diameter replacement pipe are less than the incremental revenues generated by any incremental service provided or that its use of the larger diameter pipe has resulted in operational system benefits that are sufficient to justify rolled-in rate treatment for the additional costs.

26. In order to assist parties in identifying the relevant costs in a future rate case, we will direct Enable to keep separate books and accounting of costs attributable to the proposed replacement facilities.²¹ The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.²² This information must be in sufficient detail so that the data can be identified in Statements G,

²¹ We note that Enable estimates the capitalized Allowance for Funds Used During Construction (AFUDC) is \$3,728,769 for the project, and that in estimating the amount of AFUDC to include as part of the cost of the project, Exhibit K to Enable's application indicated that it calculated AFUDC as if all funds on the project were spent on the first day of construction. This method for calculating AFUDC would lead to an over estimation of costs attributable to AFUDC. However, in response to a staff data request, Enable responded that, although the AFUDC estimate in Exhibit K assumes that all of the project spending occurs at the beginning of the project, its actual AFUDC calculation is not based on this assumption. Rather, Enable indicates that its accounting system properly calculates actual AFUDC charges based on the actual monthly spending incurred on each individual project component. Enable's February 24, 2014 Response to data request number 1.

²² 18 C.F.R. § 154.309 (2013).

I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.²³

D. Environmental Review

27. The Commission began its initial review of the proposed project following its approval for Enable²⁴ to use the pre-filing process on March 28, 2013, in Docket No. PF13-10-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Central Arkansas Pipeline Enhancement Project and Request for Comments on Environmental Issues* (NOI) on May 29, 2013. This notice was published in the Federal Register²⁵ on June 4, 2013, and 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.

28. We received scoping comments in response to the NOI from the Arkansas Department of Health, the U.S. Fish and Wildlife Service, the National Park Service, the Osage Nation Historic Preservation Office, Travis Perkins, George Lee, Julie Gillespie Adkisson *et al.*, and Susan Lee. The primary issues raised include impacts on species of concern in the project area; impacts on cultural resources; consideration of alternative pipeline routes; impacts on trees; and impacts on residential development plans.

29. To satisfy the requirements of the National Environmental Policy Act (NEPA), our staff prepared an environmental assessment (EA) for Enable's proposed project. The EA was placed into the public record on April 15, 2014. 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, cumulative impacts, and alternatives. All substantive comments received in

²³ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008), *order on reh'g*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010), *order on remand*, Order No. 710-B, 134 FERC ¶ 61,033, *order on reh'g*, Order No. 710-C, 136 FERC ¶ 61,109 (2011).

²⁴ As noted above, after the pre-filing proceeding began CenterPoint Energy Gas Transmission Company, LLC changed its name to Enable Gas Transmission, LLC, effective July 30, 2013.

²⁵ 78 *Fed. Reg.* 33401 (2013).

response to the NOI and the Notice of Application, issued on December 18, 2012 were addressed in the EA.

30. As discussed above, landowners Adkisson, Faulkner, Crafton, Rush-Hal, and 4JM, filed comments opposing the proposed route of Line BT-39 due to its impact on their properties.²⁶ However, Enable stated that the proposed route for Line BT-39 was based on comments and recommendations from representatives of Adkisson, Faulkner, Crafton and 4JM, to closely follow property lines and Highway 319 to minimize impacts to landowners. Enable states that it designed its proposed project after evaluating logical tie-in points, landowner concerns, minimization of environmental impacts, and proximity to the existing pipeline facilities operated by Enable and its transportation customer, Arkansas Gas.²⁷ The EA concludes that rerouting of the project to avoid these landowners' properties would reduce the amount of the project's pipeline facilities which could be collocated with existing highway right-of-way and increase the amount of land and easements needed for the project by increasing the route distance between Enable's existing pipeline system and interconnect points with local distribution facilities in the area.²⁸ Thus, the EA concludes the increased land requirements could result in greater land disturbance, impacting more soils, wetlands, and waterbodies, and merely transfer project impacts to other landowners.²⁹ In addition, Enable will construct the Line BT-39 pipeline, including the portion that traverses the Adkisson, Faulkner, Crafton, and 4JM properties, using design standards for areas that are more densely populated than currently exists along the proposed route.³⁰ This will allow development to occur around the pipeline right-of-way without the need to upgrade the pipe at a later date, thereby avoiding future construction disturbance.

31. Based on the analysis in the EA, we conclude that if the subject facilities are constructed or, as applicable, abandoned in accordance with Enable'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.

²⁶ See January 13, 2014 Comments of Julie Gillespie Adkisson *et al.*

²⁷ Application at 9.

²⁸ EA at Section 3.4, *Major Route Alternatives*.

²⁹ *Id.* at 3-5

³⁰ *Id.* at 2-48.

32. 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 abandonment of facilities approved by this Commission.³¹

33. 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 Enable to construct and operate the Central Arkansas Pipeline Enhancement Project, as described more fully in Enable's application and in the body of this order.

(B) Enable is granted permission and approval, pursuant to NGA section 7(b), to abandon certain facilities, as described herein and in its application.

(C) The authorization issued herein is conditioned on Enable's compliance with the environmental conditions set forth in the appendix to this order.

(D) Enable 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 Enable. Enable shall

³¹ 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), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

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

Environmental Conditions for Enable's Project

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

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

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets. Enable's exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Enable'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. Enable 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 the Commission's Upland Erosion Control, Revegetation, and Maintenance 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:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of a certificate and before construction begins**, Enable shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Enable must file revisions to the plan as schedules change. The plan shall identify:

- a. how Enable will implement the construction procedures and mitigation measures described in its application, identified in the EA, and required by the Order;
 - b. how Enable 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 Enable 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 Enable's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Enable 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. Enable shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Enable 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 Enable'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 Enable from other federal, state or local permitting agencies concerning instances of noncompliance, and Enable's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Enable shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Enable 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 proposed project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Enable 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 Enable has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Enable shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for all wells within 150 feet of the construction workspace. **Within 30 days** of placing the facilities in service, Enable shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved. **Within 1 year of completion of construction**, Enable shall file a report with the Secretary identifying all potable water supply systems damaged by construction and how they were repaired.
13. Enable shall file in its **biweekly construction status reports** the following for the horizontal directional drill entry and exit points of Highway 64 and UCPR Railroad, Luker Lane, Center Road, and the Palarm Tributary sites:
 - a. the noise measurements from the nearest noise sensitive area, obtained at the **start of drilling operations**;
 - b. the noise mitigation that Enable implemented at the start of drilling operations; and
 - c. any additional mitigation measures that Enable would implement if the initial noise measurements exceeded a day-night noise level of 55 decibels on the A-weighted scale at the nearest noise sensitive area.