

148 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP14-18-000

ORDER ISSUING CERTIFICATE

(Issued August 11, 2014)

1. On November 7, 2013, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct and operate approximately 2.4 miles of 20-inch-diameter pipeline and associated facilities in Middlesex County, New Jersey (the Woodbridge Delivery Lateral Project) that will serve the Woodbridge Energy Center, an electric generating facility being developed in Woodbridge, New Jersey. For the reasons discussed below, the Commission will grant the requested authorization, subject to appropriate conditions.

I. Background and Proposal

2. Transco is an interstate natural gas pipeline company organized and existing under Delaware law. Transco is engaged in the transportation of natural gas in interstate commerce through its natural gas transmission system extending from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. Transco proposes to construct the Woodbridge Delivery Lateral Project to provide 264,000 dekatherms (Dth) per day of firm natural gas transportation service to the Woodbridge Energy Center, a 725 megawatt natural gas-fired electric generating station currently being developed by CPV Shore, LLC (CPV) in Woodbridge, Middlesex County, New Jersey. Transco estimates the project facilities will cost approximately \$32.2 million. Specifically, Transco proposes to construct and operate the following facilities:

- (1) approximately 2.4 miles of 20-inch-diameter pipeline extending generally in an east-southeast direction from Transco's mainline near milepost (MP) 1799.0 in Middlesex County, New Jersey, to a new meter station at the to-be-constructed Woodbridge Energy Center;
 - (2) the Woodbridge Energy Center meter station, which will include flow meters, yard piping, electronic flow measurement and communications equipment, a gas chromatograph, a meter building, and other auxiliary facilities; and
 - (3) various appurtenant above- and below-ground facilities such as valves and pig launchers and receivers.
4. Transco states that it held an open season for the Woodbridge Delivery Lateral Project from December 19, 2012, to January 11, 2013, and that CPV was the only party that submitted a bid during the open season. Transco states that it has executed a binding precedent agreement with CPV for 264,000 Dth per day of firm natural gas transportation service, which is 100 percent of the firm capacity of the proposed Woodbridge Delivery Lateral.¹
5. Transco proposes to provide firm transportation service on the Woodbridge Delivery Lateral under its existing Rate Schedule FDLS (providing for firm transportation on designated delivery lateral facilities) and its blanket certificate under Subpart G of Part 284 of the Commission's regulations. Transco asserts that the precedent agreement requires that CPV and Transco execute a 15-year firm transportation service agreement under Rate Schedule FDLS within 30 days after Transco's acceptance of the requested authorization granted herein. Transco also asserts that CPV has elected to pay a negotiated rate that will be set forth in Exhibit C of the service agreement, and that it will file the Rate Schedule FDLS service agreement, or a summary of its essential terms, prior to its commencement of service.
6. As Transco's recourse rates under Rate Schedule FDLS are separately designed incremental rates based on the cost of service of each respective delivery lateral, Transco proposes to charge a recourse reservation rate for service on the Woodbridge Delivery Lateral derived from the incremental cost of service and billing determinants for the project facilities. Transco states that it has calculated the incremental cost of service for the project using its estimated cost of facilities, engineering estimates for operation and maintenance expenses based on estimates for similar facilities, and other cost factors.

¹ Transco separately filed the precedent agreement with its application as privileged information under section 388.112 of the Commission's regulations. *See* Transco Application at Exhibit I.

7. Primary and secondary transportation rights under Rate Schedule FDLS are restricted to points located on the particular Rate Schedule FDLS delivery lateral. Thus, Transco states that CPV's primary and secondary rights under its service agreement will be limited to points located on the Woodbridge Delivery Lateral, whereas non-project shippers will only have access to those points if they use Rate Schedule IDLS to receive interruptible service on the lateral or acquire Rate Schedule FDLS capacity on the lateral through capacity release.

8. Transco contends that its proposal will enable it to deliver natural gas to the Woodbridge Energy Center for electric power generation, increasing the availability of electricity on the national power grid and advancing clean air and greenhouse gas objectives.

II. Public Notice, Intervention, and Protest

9. Notice of Transco's application was published in the *Federal Register* on November 15, 2013 (78 Fed. Reg. 78,846). The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.²

10. On April 3, 2014, the Musculoskeletal Transplant Foundation (MTF) and its affiliate, May Street Medical, LLC (May Street), jointly filed an untimely motion to intervene with their comment on the Environmental Assessment (EA).³ MTF and May Street own land crossed by the proposed route of the project and state that the full impact of the proposed project on their business was not identified until the precise route over their property was clarified during recent site visits by Transco. MTF and May Street have demonstrated an interest in this proceeding and have shown good cause for intervening out of time. The untimely motion to intervene will not delay, disrupt, or unfairly prejudice any parties to the proceeding. Thus, the Commission will grant the untimely motion to intervene.⁴

² 18 C.F.R. § 385.214(c) (2013).

³ MTF and May Street state that MTF is a non-profit organization comprised of a national consortium of organ procurement and tissue recovery organizations and academic medical institutions, as well as two subsidiaries. MTF operates a tissue bank on its property along the route of the proposed Woodbridge Delivery Lateral.

⁴ 18 C.F.R. § 385.214(d) (2013).

11. Johns Manville, a Berkshire Hathaway Company (Johns Manville), filed a protest to the application with its motion to intervene.⁵ The route of the proposed Woodbridge Delivery Lateral traverses two parcels of land owned by Johns Manville, one of which contains its Edison, New Jersey, manufacturing plant, and the other of which Johns Manville uses for truck staging, materials storage, and other logistical operations. Johns Manville asserts that the construction of the Woodbridge Delivery Lateral across its land will significantly disrupt its business, as well as foreclose a planned expansion of its facility, resulting in substantial economic harm to its business, reputation, and market position.

12. MTF and May Street also filed a protest to the proposed project, with their joint comment on the EA and motion to intervene. Like Johns Manville, MTF and May Street own two parcels of land crossed by the proposed route of the pipeline, an “operating” parcel which houses a tissue processing center and main office for the MTF staff, and a “development” parcel on which MTF and May Street have planned to construct a new commercial office building to serve as its headquarters. MTF and May Street contend that construction of the project on their operating parcel of land would negatively affect access to its facility, which operates 24/7, while the existence of the pipeline on its development parcel would prevent its construction of its new headquarters building. MTF and May Street assert that the Woodbridge Delivery Lateral would have a material adverse effect on their operations, business plan and property value.

13. Sugarbush Associates, LLC (Sugarbush), which owns land crossed by the project, filed comments to Transco’s application. Sugarbush is concerned about the impact of the project on its future development plans and seeks a rerouting of the pipeline off of its property. Subsequently, Sugarbush’s parent company, Kaplan Companies (Kaplan), filed comments on the EA, raising the same concerns.⁶

⁵ Johns Manville describes itself as a worldwide industrial manufacturer and marketer of roofing and insulation products and of fibers and nonwoven materials for commercial, industrial, and residential applications.

⁶ Kaplan states it is a 3rd generation, family-owned business that designs, builds, and markets homes, small office buildings, and apartment complexes throughout New York, New Jersey, Atlanta, and Texas. Sugarbush and Kaplan will be referred to collectively as Sugarbush/Kaplan.

14. South River Redevelopment, LLC (South River), which owns land fronting on one of the streets (Gibian Street) under which the pipeline will be constructed, also filed comments to Transco's application. South River raises issues regarding access to its property during construction.⁷

15. On February 7, 2014, Transco filed supplemental information in response to Johns Manville's protest. On February 11, 2014, Johns Manville filed a "Motion to Strike or, in the Alternative, an Answer" to Transco's filing. Johns Manville contends that the Commission should strike Transco's filing because that filing is an answer to a protest, which is prohibited by the Commission's regulations, and the filing was late as it was made more than 15 days after Johns Manville's protest. Transco also filed, on April 23, 2014, an answer to the protests of MTF and May Street, and Kaplan. Answers to protests and answers to answers are not permitted under the Commission's rules.⁸ Nevertheless, the Commission will accept the answers in this proceeding because they provide information that will assist in the Commission's decision making.

16. The issues raised in the protests and comments are addressed further below.

III. Discussion

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

A. Certificate Policy Statement

18. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁹ 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 pipeline facilities, the

⁷Neither South River, Sugarbush, nor Kaplan moved to intervene in the proceeding.

⁸ See 18 C.F.R. § 385.213(a)(2) (2013).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

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

1. Subsidization

20. As noted 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. Transco proposes to charge separately-designed incremental recourse rates for service on the new Woodbridge Delivery Lateral that will be based on and will recover the cost of service attributable to lateral facilities. Thus, the Commission finds that the project will not be subsidized by Transco's existing customers, and the threshold requirement of no subsidization is met.¹⁰

2. Impact on Existing Customers and Existing Pipelines and Their Customers

21. The Woodbridge Delivery Lateral Project involves the construction and operation of a delivery lateral off of Transco's mainline to serve the natural gas needs of the Woodbridge Energy Center, a new customer. The proposed project will have no

¹⁰ The Certificate Policy Statement provides that expansion projects built by existing pipelines to provide additional service that are incrementally priced avoid subsidization by existing shippers and meet the threshold requirement. Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

operational effect on service to Transco's existing customers. In addition, Transco's transportation service will not displace existing service on any other pipeline because there are no existing pipelines serving CPV's contemplated electric generating station. Also, no pipelines or their captive customers filed adverse comments regarding Transco's proposal.

3. Impact on Landowners

22. The proposed Woodbridge Delivery Lateral Project consists of 2.4 miles of natural gas pipeline and a delivery meter station at the end of the proposed pipeline at the Woodbridge Energy Center.¹¹ Transco proposes to route the pipeline predominantly through developed industrial and commercial areas and transportation corridors. Construction of the Woodbridge Delivery Lateral will disturb approximately 16 acres of land, of which approximately nine acres will be used for permanent operations. Transco states that construction of the pipeline will require the acquisition of temporary and permanent easements, or rights-of-way, for the entire length of the proposed route.¹² In its application, Transco states that it has surveyed approximately 75 percent of the land crossed by the proposed project, but does not indicate to what extent it has obtained the necessary easements from landowners.¹³ However, Transco states that it is committed to working cooperatively with landowners and to negotiating mutually agreeable settlements with all affected landowners. As discussed below, Johns Manville, MTF and May Street, Sugarbush/Kaplan, and South River raise concerns regarding the impact of the project on access to and/or the use of their properties.

a. Landowner Arguments **Johns Manville**

23. Johns Manville owns two parcels of land that will be crossed by the proposed Woodbridge Delivery Lateral between MPs 0.7 and 0.9 – a vacant parcel of land and the parcel of land comprising its manufacturing plant site. The vacant parcel of land lies at

¹¹ Transco will have an exclusive easement for the proposed meter station within CPV's Woodbridge Energy Center that is located in an existing industrial area owned by CPV. *See* Application at 11 and at Resource Report No. 8 at p. 8-6.

¹² Transco proposes to generally use an 85-foot-wide construction right-of-way to install the pipeline and a 75-foot-wide construction right-of-way in wetland areas. Transco proposes to maintain a 30-foot-wide permanent easement centered on the proposed pipeline.

¹³ *See* Transco Application, Resource Report No. 1 at p. 1-9.

the southwestern corner of Johns Manville's property at MP 0.7, at the corner of Plymouth Place and Liddle Avenue. Johns Manville uses this parcel for logistical operations to support its manufacturing plant, such as truck staging for the loading and unloading of deliveries to and from the plant, and the storage of materials inventory. The manufacturing plant site lies on the other side of Liddle Avenue between MP 0.75 and 0.9. The rear of the plant backs up to the New Jersey Turnpike, which runs along the length of the plant site.

24. Transco has considered or proposed at various stages in this proceeding three pipeline route alternatives or variations for the crossing of Johns Manville's property, largely dictated by several different options for the crossing of the adjacent New Jersey Turnpike (I-95). First, during its route evaluations prior to filing its application, Transco considered a potential route that would enter Johns Manville's vacant parcel from the west and traverse only a small corner of the vacant parcel before crossing Liddle Avenue onto the south end of the plant site, traversing part of the loading dock area and concrete pad, and then immediately crossing I-95 to the east (the South Route).¹⁴ Throughout this proceeding, Johns Manville has expressed its preference for the South Route, as it results in the shortest incursion on its property, crossing only the southern tips of each of its two parcels and, therefore, imposing the least impact on its business. However, the entry bore pit required by the perpendicular I-95 crossing under the South Route would have needed to be on the concrete pad at the loading dock area and remain open for several weeks with construction equipment in place for the duration of the installation process. Also, as later explained by Transco, the exit bore pit on the east side of the I-95 crossing under the South Route would have been located in wetland areas.¹⁵

25. Thus, Transco states that in order to minimize disruption to Johns Manville's loading dock area from an open bore pit and to avoid having an exit bore pit located in wetlands, Transco, in its application, rejected the South Route and adopted as part of its filed route a route alternative that positions the I-95 crossing and bore pit at the north end

¹⁴ See Transco Application, Resource Report 10, Figure 10-1 showing proposed route deviation associated with Minor Route Alternative 3. The South Route entailed a 90-degree conventional bore crossing of I-95 because the New Jersey Turnpike Authority generally requires pipelines to cross I-95 using a perpendicular, conventional bore. This South Route is not Major Route Alternative 1 considered in Transco's pre-filing route feasibility analysis, which is also identified as "South Route" in Resource Report 10 at p. 10-8.

¹⁵ Transco February 7, 2014 Supplemental Filing (Answer) at 2.

of the property (the Filed Route).¹⁶ Under the Filed Route, after the proposed pipeline crosses the Johns Manville's vacant staging area and then the loading dock area of the plant site, instead of immediately crossing I-95 and exiting Johns Manville's property, it continues at approximately MP 0.80 in a northeasterly direction behind the entire length of the plant underneath a paved driveway. The proposed pipeline right-of-way would be located between I-95 and the rear of the Johns Manville plant building, and parallel to I-95. Transco indicated that the proposed right-of-way easement behind the plant also parallels and overlaps, to the extent possible, an existing permanent right-of-way easement for Colonial Pipeline.¹⁷ At the north, rather than south, end of the plant, at MP 0.9, the proposed pipeline under the Filed Route crosses I-95 via a conventional bore in a southeasterly direction.

26. In its protest, Johns Manville argued that Transco failed to attempt to minimize adverse impacts on its business by proposing the Filed Route and not the South Route, and that the Filed Route maximizes, not minimizes, disruption to its business from construction of the pipeline. Johns Manville asserted that construction of the proposed project with an I-95 crossing at either the northern or the southern end of its plant parcel will interfere with its use of its loading dock area for shipments out of the plant, thereby impacting its ability to make timely deliveries of finished products from the plant, resulting in significant lost sales and profits. However, Johns Manville asserted that construction of the Filed Route, crossing I-95 at the north end of the plant, would be far more disruptive to plant operations than the South Route, as it would exacerbate the interference and harm to its operations by traversing not only the loading dock area, but also the receiving dock area, where daily deliveries of bulk raw materials occur. In addition, Johns Manville contended that construction over the receiving dock area would severely disrupt daily service and deliveries, jeopardizing its PVC business, and asserted that the proposed route would involve trenching longitudinally across virtually the entire length of Johns Manville's property, with temporary workspace extending up against the wall of the plant.

27. Johns Manville also asserted that the Filed Route would, unlike the South Route Transco originally considered, prevent it from going forward with its plans to install critical new raw material storage capacity (i.e., additional silos) and expanded

¹⁶ Specifically, Transco adopted Minor Route Alternative 3 as part of its filed route. *See* Transco Application, Resource Report No. 10, Table 10.5.2 (Summary of Minor Route Alternatives Along the Preferred Route) at p. 10-10 and Figure 10-1, Alternative 3.

¹⁷ There is also an existing pipeline right-of-way easement for Sunoco Pipeline lying between the Colonial Pipeline easement and I-95.

thermoforming and extrusion operations onsite, an expansion it claims is necessary to keep up with growing demand for its products. Johns Manville insisted that there is not enough room on the plant property to accommodate a longitudinal Transco easement alongside Colonial Pipeline's easement without foreclosing John Manville's expansion plans. By preventing its future expansion of its plant, Johns Manville asserted that the location and operation of the proposed pipeline would significantly devalue the land and cause economic harm.

28. With respect to the vacant parcel Johns Manville uses for logistical operations, Johns Manville asserted that construction of the pipeline on this parcel will interfere with necessary truck parking and staging, which will result in longer lead- and wait-times for customers. Johns Manville contended that disruption of its use of the parcel will require securing another suitable location within a five-minute drive of the facility. Transco responded that it was actively seeking another suitable location within a five-minute drive that Johns Manville could use for truck staging and parking.¹⁸

29. In response to Johns Manville's protests regarding the impact that the proposed Filed Route would have on Johns Manville's business and future plant expansion, Transco proposed a third route variation on the Johns Manville property, after the issuance of the EA.¹⁹ This new route, which Transco now supports as its preferred alternative, modifies the Filed Route by: (1) replacing its original, 90-degree, north crossing of I-95 with a south crossing of I-95 using a horizontal directional drill (HDD) crossing method; and (2) locating the HDD entry point on the north end of Johns Manville's vacant land parcel (the Modified Route).²⁰ However, Transco states it will use the Filed Route as the alternate option for crossing I-95 in the event the newly proposed HDD crossing cannot be completed for any reason.

30. While Johns Manville continues to prefer the South Route of the three routes across its property, it requests that the Commission require Transco to adopt either the South Route or the Modified Route, rather than the Filed Route, because they minimize the impact on its plant operations. Both the South Route and the Modified Route avoid the longitudinal trenching along the entire length of the rear of the plant required by the Filed Route and any interference with Johns Manville's receiving dock or future expansion plans.

¹⁸ See Transco February 7, 2014 Supplemental Filing (Answer) at 3.

¹⁹ See Transco March 21, 2014 Comments on the EA.

²⁰ Hence, the newly proposed southern crossing of I-95 differs in location from that of the I-95 crossing of the South Route, as it appears to lie slightly further north.

31. However, to accommodate the HDD method and entry point, the proposed pipeline under the Modified Route will now cross a larger amount of Johns Manville's vacant land parcel than it would have under the Filed Route as it runs northward to the HDD entry point, but will affect less of the loading dock area and its concrete pad as it then turns and extends from the HDD entry point eastward to cross I-95. Johns Manville raises concern that Transco intends to merely identify another location for its logistical operations rather than bear all of the costs associated with Johns Manville's use of the alternative location.²¹ Thus, Johns Manville requests that the Commission condition approval of the project on Transco securing at its own expense, a suitable alternative truck staging and parking area within a five minute drive from the plant for the duration of any disruption that will occur from the project.

32. In addition, as further discussed in the environmental section of this order, Johns Manville argues in its comments on the EA that there are no overriding environmental concerns that would support the Commission approving the Filed Route rather than the South Route if the HDD crossing of I-95 under the Modified Route cannot be approved or implemented.

MTF and May Street

33. As stated, *supra*, the proposed Woodbridge Delivery Lateral will cross MTF and May Street's operating parcel, containing MTF's office and tissue processing center, and their development parcel, on which MTF and May Street plan to build a new headquarters building. The two parcels are located less than half a mile from each other, but are not adjacent. The operating parcel, at 125/175 May Street, Edison, New Jersey, is owned in fee by May Street and leased in total to MTF, and lies at approximately MP 1.4 of the Modified Route. The development parcel, known as Block No. 756.A, Lots 7 and 10 on the Township of Edison Tax Map, is owned in fee by MTF, and lies between MPs 1.0 and 1.1 of the Modified Route. The proposed pipeline will pass through each of the parcels near the southern border of each property.

34. The operating parcel is flanked by two driveways off of May Street that provide access into the parking lots for the facility. Transco proposes to utilize these driveways as access roads to the pipeline construction right-of-way, which lies at the end of the access roads. Accordingly, MTF and May Street argue that the construction operations for the proposed pipeline on the operating parcel will frustrate critical truck ingress and

²¹ In proposing the Modified Route in its comments on the EA, Transco stated that to mitigate impacts on Johns Manville's vacant parcel used for logistical operations, it would "identify a suitable location within a 5 minute drive of the facility for use as truck staging and parking," Transco March 21, 2014 Comments on the EA.

egress from the tissue processing facility, which operates around the clock every day, and will significantly impact necessary parking for the operating parcel. Thus, MTF and May Street contend that construction of the proposed pipeline on the operating parcel will pose an extreme hardship to the time-sensitive operations of MTF.

35. With respect to the construction of the pipeline through the development parcel, MTF and May Street state that they have obtained approvals from the municipality for the construction of a headquarters building containing 167,000 square feet of space, along with the government-mandated number of parking spaces appurtenant to the building.²² The drawing of the development parcel submitted by MTF and May Street shows that the proposed pipeline itself will pass through the southern row of proposed parking spaces. However, MTF and May Street state that after the issuance of the EA, they became aware of an ordinance of the Township of Edison that provides that “no building or land disturbance shall be permitted within seventy-five (75) feet of any distribution, gathering, or transmission line”²³ MTF and May Street maintain that the application of this ordinance creates a 75-foot setback that encroaches upon additional rows of parking spaces and a corner of the proposed office building. Therefore, they claim that MTF will not be able to build the building as designed and it may not be as large as required because the elimination of additional mandatory parking spaces could result in a reduction in the allowed size of the building.

36. MTF and May Street state that although Transco has demonstrated that it is willing and able to alter the proposed route by its March 21, 2014 filing of the Modified Route across Johns Mansville’s property, Transco has neither agreed to shift the proposed route across their property, nor offered any proposed mitigation for the project effects on either of their parcels. MTF and May Street request that the Commission direct Transco to modify the pipeline route to avoid their land entirely, or to at least, minimize adverse impacts on MTF and May Street.²⁴

²² MTF and May Street attach to their protest a drawing of the development parcel setting forth the locations of the proposed building, parking spaces, and proposed pipeline. See MTF and May Street’s April 3, 2014 Motion to Intervene Out of Time, Protest and Comment on the Environmental Assessment.

²³ *Id.* at 4 (citing Section 37-4.21(b) of the Township of Edison ordinance).

²⁴ MTF and May Street’s comment on the EA, raising concern regarding subterranean issues on its property, is addressed in the environmental section of this order.

37. Transco responds that as part of its initial alternatives analysis for MTF's development parcel, Transco evaluated locating the pipeline off of the MTF's property, both to the north and to the south of the proposed route. However, Transco states that both options were abandoned due to environmental and engineering constraints, as shifting the route to the north would impact the Middlesex Greenway Multi-Use Trail, and shifting the route to the south would impact New Jersey Department of Transportation property. With respect to MTF and May Street's operating parcel, Transco indicates that it is exploring several options to mitigate the construction impacts, such as the use of shuttles to and from the operating parcel during the pipeline construction.

Sugarbush/Kaplan

38. Sugarbush owns 13 acres of vacant property from approximately MP 1.6 to MP 1.7 of the pipeline route, between two primarily east-west roads, State Route 440 (SR440) to the north of the property, and King George Post Road to the south, which property Sugarbush states is slated for development in the near future.²⁵ The proposed pipeline will enter the Sugarbush property in a southerly direction after crossing SR440, turn east briefly and then turn south again, running along the eastern edge of the property parallel to Sugarbush's property line. Sugarbush and Kaplan objects to the routing of the pipeline through their property because they maintain that a permanent pipeline easement will impair their future development plans.²⁶ They assert that there are available alternative locations for the lateral using public rights-of-way, and that they provided these alternative routes to Transco. Sugarbush and Kaplan contend that because Transco continues to support its proposed route through their property despite the existence of alternative routes, Transco has not minimized the impact to the property and the mixed-use development project planned thereon.

39. Transco states that although it considered having the pipeline cross SR440 onto Sugarbush's property at a point further east than the proposed SR440 crossing to reduce the pipeline's alignment and impact on Sugarbush's property, that alternative alignment would result in the complete blockage of access to another property on the other side of SR440.²⁷ Thus, Transco maintains that the alignment on the Sugarbush property has

²⁵ This property is identified as Block 755.B, Lot 14 on the Township of Edison, Tax Map.

²⁶ Kaplan submitted with its comments on the EA a drawing of a concept plan for the "Edison Centre," its proposed mixed-use development on the property comprised of residential, retail, office, and hotel uses.

²⁷ See Transco January 7, 2014 Data Response to Question No. 15.

been moved as close to Sugarbush's eastern property line as possible, while maintaining access to all properties and minimizing the length of pipeline on the Sugarbush property. This issue is also discussed in more detail in the environmental section of the order.

South River

40. South River's property fronts onto Gibian Street, under which the pipeline will be installed, between MPs 0.4 and 0.5 of the pipeline route. South River is concerned about access to its property during construction, as the property houses a plumbing business and a two-family residence less than 15 feet from the edge of the construction workspace, both of which South River states require access on a 24/7 basis. South River states that if access to the property will be restricted for any period of time, it will request compensation from Transco for expenses incurred in relocating the plumbing business and residential tenants.

41. Transco has confirmed that the driveway serving the plumbing business and residences on South River's property located at 86 Gibian Street will not be directly impacted by the construction and will remain in service, as the pipeline route and associated workspaces turn north along Simon Avenue before reaching the driveway for 86 Gibian Street.²⁸ In any event, Transco indicates it will maintain a travel lane to provide access to all residences along Gibian Street and has confirmed that access to all parcels will be maintained continuously throughout construction.

b. Landowner Impact Finding

42. The Commission is satisfied that Transco has designed the proposed route of the pipeline to minimize the impact on landowners to the extent practicable. The permanent and construction rights-of-way of the proposed line traverse only industrial and commercial land and avoid crossing heavy residential areas that are nearby.²⁹ Transco also proposes to site the pipeline right-of-way parallel to or beside existing transportation or utility infrastructure, such as roads and highways, highway interchanges, and existing pipelines. In addition, prior to filing its proposed route in its application, Transco considered two major route alternatives, and four minor route alternatives or route deviations. Transco rejected Route Alternative 1 because of a proposed electric facility expansion over the proposed alignment, and rejected Route Alternative 2 because it

²⁸ See Transco January 7, 2014 Data Response to Question No. 7.

²⁹ The Commission notes that 10 residential properties are located within 50 feet of the proposed temporary construction workspaces, including the residence on South River's property.

would be located within the Middlesex Greenway and May Street Park for more than half the pipeline's length, as well as closer to residential neighborhoods and a middle school.³⁰ Transco has also adopted two of the four minor route alternatives considered into its proposed route, one of which it adopted to avoid future commercial development that would be under construction during the project construction.³¹

43. Moreover, significantly, after the filing of its application and Johns Manville's protest, Transco endeavored to address Johns Manville's concerns by continuing to analyze route options to minimize the impact on Johns Manville. This additional analysis resulted in Transco's abandoning the Filed Route, and adopting the Modified Route, as its proposed route through Johns Manville's property. The Modified Route greatly reduces the project's impact on Johns Manville by eliminating the lateral's longitudinal pathway behind its plant and any interference with future expansion plans from a crossing of I-95 at the north end of the plant. Thus, while the impact on Johns Manville's business operations might not be as small as it would be under Johns Manville's preferred South route, the Modified Route reduces interference with the plant's receiving dock and avoids any potential expansion of the plant, the latter of which is the only permanent impact of the project Johns Manville has alleged. The other impacts on Johns Manville from the Modified Route, as discussed further below, are temporary construction impacts. Accordingly, as discussed in the environmental section of this order, because the Modified Route significantly minimizes impacts on Johns Manville's property and manufacturing business, and is supported by Johns Manville, the Commission is approving Transco's change in routing and construction procedure to the Modified Route.³²

44. Transco has indicated an intent to negotiate temporary and permanent easements with all owners of land crossed by the project. The majority of the impacts of this project on all landowners will be temporary impacts during the construction of the pipeline. As

³⁰ Application, Resource Report No. 10 at pp. 10-8 to 10-9.

³¹ Transco has adopted Minor Route Alternatives 1 and 4; Minor Route Alternative 4 is the deviation to avoid future development. With Transco's newly proposed Modified Route, Minor Route Alternative 3 is no longer part of the proposed route.

³² In the event the HDD crossing of I-95 under the Modified Route cannot be approved or implemented, resulting in Transco being unable to construct the Modified Route, the Commission is, herein, issuing alternative authorization for Transco to construct the Filed Route, rather than the South Route, for the reasons discussed in the environmental section of this order.

discussed above, only three landowners whose land is crossed by the project, in a heavily congested urban area, have raised concerns regarding the impact of the pipeline on access to, or the use of, their land: Johns Manville, MTF and May Street, and Sugarbush/Kaplan.³³ The primary impact of the project on these landowners are temporary construction impacts on Johns Manville's use of its vacant parcel for truck staging and materials storage, and on access to: (1) Johns Manville's loading and receiving docks on the plant site for the trucks delivering materials and goods to and from the manufacturing plant; and (2) MTF's tissue processing center and parking lot on its operating parcel for the trucks picking up and delivering tissue.

45. However, as discussed in more detail in the EA,³⁴ Transco will minimize such impacts by: (1) maintaining continuous ingress and egress to all industrial, commercial, and residential properties on or surrounding the pipeline route during construction, including Johns Mansville's plant, and MTF's tissue bank;³⁵ (2) preparing a traffic plan prior to construction, which the Commission is requiring that Transco file with the Commission for approval; (3) coordinating with Johns Manville to install the pipeline on its property at night or when the plant is not in operation; (4) installing steel plating over any excavation to maintain truck access for receipt and deliveries at the manufacturing plant as necessary during operating hours; and (5) attempting to secure a replacement truck staging and storage area close to Johns Mansville's Plant.³⁶

46. Once construction is completed, Johns Manville will be able to again use the permanent pipeline easement on its vacant parcel for its truck staging and parking and materials storage and the permanent easement on its plant site for its incoming and outgoing truck traffic supporting daily receipts of raw materials and outgoing shipments

³³ South River's property is not crossed by the proposed lateral, but in any event, Transco has confirmed that access to its property at 86 Gibian Street will not be blocked.

³⁴ See EA at 17-18.

³⁵ See Transco January 7, 2014 Data Response to Question No. 7. As noted in the environmental section of this order, Transco is considering providing shuttles to transport MTF employees and visitors to and from the operating parcel.

³⁶ With respect to Transco's offer to identify another suitable parcel of land within a five-minute drive of the plant for Johns Manville to use for logistical purposes, issues related to whether Transco will absorb the costs associated with Johns Manville's use of the substitute location for the duration of the construction activities, as requested by Johns Manville, are outside the scope of the Commission's jurisdiction. However, Johns Manville is certainly free to seek such compensation during easement negotiations.

of goods, and other normal plant operations. Similarly, once construction on MTF's operating parcel is complete, full access to the driveways to the facility and to the parking lot will be restored, and MTF will be able to utilize the permanent pipeline easement for facility parking.³⁷

47. MTF and May Street and Sugarbush/Kaplan have each asserted that the permanent pipeline right-of-way will interfere with plans to expand or develop their properties, causing economic harm, while Johns Manville has argued that the Filed Route will interfere with a planned plant expansion. However, as discussed in more detail in the environmental section of this order, while Kaplan states that Sugarbush/Kaplan is planning a mixed use development, no application to change the existing industrial zoning for the site has been filed, and no permitted plans exist. The same is true with regard to Johns Manville's contemplated expansion. Thus, any potential adverse impacts on Sugarbush/Kaplan's development of their property, as well as on Johns Manville's expansion of its plant (in the event Transco must construct the alternative Filed Route), are speculative.³⁸ Nevertheless, the Commission is convinced that Transco has routed the pipeline as close to the eastern edge of Sugarbush's property line as possible to maximize the development potential of Sugarbush's property.³⁹ Further, while Sugarbush/Kaplan assert that they presented adequate alternative routes to Transco, neither Sugarbush nor Kaplan provided potential alternative routes to the Commission for consideration.

48. Only MTF and May Street allege that they have obtained approval by the Township of Edison for the construction of new headquarters building and parking lot on the development parcel. However, they allege that because of the Township of Edison ordinance requiring no construction or land disturbance within 75 feet of a pipeline, they would be unable to construct the proposed office building as sited, since the 75-foot setback would encroach upon a corner of the building, as well as a portion of the parking lot.

³⁷ However, Johns Manville and MTF will not be able to construct any building, structure, or other improvement upon the easements that would interfere with Transco's access to the easement and safe operation of the pipeline.

³⁸ In fact, in Kaplan's comments on the EA, it admits that its development project is at a preliminary stage and that it does not yet know whether there will be a conflict between the proposed pipeline and the underground utility lines required for the mixed-use development.

³⁹ Sugarbush will still have unrestricted use of any part of its property not encumbered by the easement.

49. While Transco evaluated alternative routes to avoid MTF and May Street's development parcel, the Commission finds that the public convenience and necessity permit the routing of the proposed pipeline as proposed. A route further south of the development parcel would interfere with New Jersey Department of Transportation property, and a route north of MTF and May Street's development parcel would encroach upon the Middlesex Greenway, a public use trail. Route options for the project are limited due to the fact that the entire Woodbridge Delivery Lateral is located in a highly congested and developed area. Impacts on landowners of the nature found here are often unavoidable results of the construction of natural gas infrastructure in the northeast, even where the route, as here, is only 2.4 miles long.⁴⁰

50. Finally, the Commission notes that landowners can seek compensation for lost development potential, the loss of use of their land during construction, and any perceived loss of property value through the easement acquisition process or in court.

51. In conclusion, the Commission finds that there are no adverse impacts from the proposed Woodbridge Delivery Lateral Project on Transco's existing customers or on other pipelines and their captive customers. While it appears that there may be an impact on MTF and May Street's ability to construct its headquarters building on its development parcel as planned, and there potentially could be residual impacts on other landowners, these impacts are outweighed by the benefits of the project. The proposed project will enable Transco to provide 264,000 Dth per day of natural gas transportation service to CPV's Woodbridge Energy Center electric power station for use in the generation of electric power to serve the electricity needs of the region. Transco has entered into a precedent agreement with CPV for all of the capacity of the proposed lateral. Therefore, the Commission finds, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that approval of the Woodbridge Delivery Lateral Project is required by the public convenience and necessity, subject to conditions set forth below.

B. Rates

52. For the firm transportation service to be provided on the Woodbridge Delivery Lateral under Rate Schedule FDLS, Transco proposes to charge an incremental daily recourse reservation rate of \$0.08379 per Dth. Transco also proposes to charge \$0.08379 per Dth as its 100 percent load factor interruptible service rate under Rate Schedule IDLS. The proposed FDLS recourse rate was developed by dividing the annual incremental cost of service of \$8,073,775 by an annual transportation quantity of 96,360,000 Dth (264,000 Dth per day multiplied by 365 days). Transco applied a pre-tax

⁴⁰ The Commission notes that it may be possible for MTF and May Street to obtain a variance of the setback ordinance from the local planning board.

return of 15.34 percent, which it states is the most recently established pre-tax return rate established by its settlement approved in Docket No. RP01-245-000.⁴¹ Transco proposes to depreciate the project facilities using a depreciation rate of 6.67 percent, which is based on the 15-year primary term of the CPV's Rate Schedule FDLS service agreement. In addition, Transco applied the onshore negative salvage rate of 0.57 percent from its recent settlement agreement in Docket No. RP12-993-000.⁴²

53. Transco does not propose to retain any compressor fuel for the project, as the project uses no compression and shippers will only have rights on the lateral. However, Transco proposes to charge the applicable Zone 6 lost and unaccounted for fuel retention percentage for Rate Schedules FDLS and IDLS, as provided in section 12.2 of its tariff. Transco also proposes to charge a commodity rate, ACA surcharge, and any other applicable charges, consistent with the rates currently charged for services offered on existing laterals under Rate Schedules FDLS and IDLS.

54. The Commission has reviewed Transco's cost of service and existing rate structure and finds that the proposed rates for transportation service on the proposed Woodbridge Delivery Lateral are reasonable. Thus, the Commission accepts Transco's proposed rates for Rate Schedules FDLS and IDLS and directs Transco to file tariff records to reflect inclusion of the new incremental lateral service provided by the project into Transco's tariff at least 30 days, but not more than 60 days, prior to the date the project facilities go into service.

55. Transco proposes to provide service to CPV under a negotiated rate agreement. Transco must file either its negotiated rate agreement or a tariff record setting forth the essential terms of the agreement, in accordance with the Commission's Alternative Rate

⁴¹ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). Transco has used the pre-tax return and certain other cost factors underlying the Docket No. RP01-245-000 settlement rates because the settlement agreement in its most recent rate case in Docket No. RP12-993-000 is a "black box" settlement, which does not specify most cost-of-service components, including rate of return.

⁴² *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205 (2013).

Policy Statement⁴³ and the Commission's negotiated rate policies.⁴⁴ Transco must file the negotiated rate agreement or tariff record at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

56. Consistent with the Certificate Policy Statement, the Commission directs Transco to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission regulations.⁴⁵ 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 the information must be provided consistent with Order No. 710.⁴⁶ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to rate proceedings determine the costs of the project.

C. Environmental Analysis

57. On November 22, 2013, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Woodbridge Lateral Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register⁴⁷ and mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

⁴³ *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), *reh'g denied*, 75 FERC ¶ 61,066 (1996).

⁴⁴ *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).

⁴⁵ 18 C.F.R. § 154.309 (2013).

⁴⁶ *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

⁴⁷ 78 Fed. Reg. 71,599 (November 29, 2013).

58. In response to the NOI and public scoping process, the Commission received comments from the New Jersey Department of Environmental Protection (NJDEP), the Natural Resources Conservation Service, and three landowners. The primary issues raised during the scoping period pertained to the pipeline route, alternatives, access to property, air quality, and permitting requirements.

59. To satisfy the requirements of the National Environmental Policy Act (NEPA), Commission staff prepared an EA for Transco's proposed project. 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. All substantive comments received in response to the NOI were addressed in the EA.

60. The Commission issued the EA for a 30-day comment period and placed it into the public record on March 5, 2014. The Commission received comments on the EA from Transco, Johns Manville, MTF and May Street, jointly, and the New Jersey State Historic Preservation Office (SHPO).

61. In its comments, Transco requests three minor route modifications and the addition of a 9.72-acre temporary contractor staging yard. Transco attaches to its comments updated alignment sheets. Two of the modifications, between MP 1.7 and 2.0, were developed as a result of discussions with the affected landowners.⁴⁸ Because these modifications are acceptable to the landowners and do not affect any new resources, the Commission approves their inclusion as part of the proposed route.

62. The third requested route modification was developed in response to the concerns of Johns Manville and is the Modified Route, discussed *supra*. In its comments on the EA, Transco states that based on the New Jersey Turnpike Authority's general requirement for perpendicular pipeline crossings of I-95 and Transco's determination that a perpendicular crossing originating from Johns Manville's vacant land parcel was not feasible due to the physical constraints of the surrounding area, the HDD crossing method at that location was not evaluated as or considered to be a viable option during the original route analysis. However, after Johns Manville filed its protest, Transco continued to evaluate the method and location of the crossing of I-95 by the proposed pipeline on Johns Manville's property and to explore the possibility of a potential deviation from the New Jersey Turnpike Authority's perpendicular pipeline crossing requirement. Transco states it met with the New Jersey Turnpike Authority to discuss the possibility of a diagonal HDD crossing of I-95, and that the Authority has indicated to Transco that a potential HDD crossing of I-95 at approximately a 50 degree angle may be

⁴⁸ See Transco's March 21, 2014 Comments on the EA at 2.

acceptable. Transco states it has obtained guidance from the New Jersey Turnpike Authority and is working to obtain the necessary approval. Thus, because a diagonal HDD crossing would reduce impacts to Johns Manville's property, operations, and potential future development, Transco is requesting approval to modify its proposed pipeline route to cross the Johns Manville property to use the diagonal HDD method at the south end of Johns Manville's property, i.e., to use the Modified Route discussed above.⁴⁹

63. The Commission agrees with Transco that this newly-proposed change in routing and construction method to that of the Modified Route will significantly minimize the impacts on Johns Manville's business by reducing the ground disturbance and the length of the crossing on the Johns Manville property, lessening the impact on Johns Manville's loading dock, and eliminating interference with its receiving dock and future expansion plans. The Commission's environmental staff has reviewed Transco's new proposed route across Johns Manville's property via the HDD method, including the alignment sheets and other information, and finds it environmentally acceptable. Moreover, in its comments, Johns Manville expresses its support for approval of either the South Route or this Modified Route.⁵⁰ Accordingly, the Commission approves this change in routing and construction procedure reflected by the Modified Route. However, Transco has not provided details regarding the noise impacts of its proposed HDD construction method. Therefore, to ensure that noise impacts on the surrounding community are adequately mitigated, the Commission is adding Environmental Condition No. 16 to prevent noise levels from exceeding 55 decibels at the nearest noise-sensitive areas.

64. The Modified Route and HDD construction method being approved herein is Transco's preferred route. However, Transco indicates that if the proposed HDD construction method and Modified Route cannot be completed for any reason, which could include a determination that the new route is not feasible based on the results of the geotechnical study or the disapproval of the diagonal HDD crossing by the New Jersey Turnpike Authority, it proposes to use its original Filed Route as the alternate option for crossing I-95.

⁴⁹ Transco submitted a draft site-specific HDD plan as Attachment 2 to its March 21, 2014 Comments on the EA. Transco states that a geotechnical study is required for the new HDD crossing of I-95, and that once the geotechnical study has been completed, it will revise the site-specific HDD plan.

⁵⁰ Johns Manville's April 4, 2014 Comments on the Woodbridge Delivery Lateral Project Environmental Assessment at 8.

65. With respect to the pipeline route across Johns Manville's property, the EA finds that the Filed Route minimizes disruption to Johns Manville's business as much as possible while also minimizing impacts to the environment.⁵¹ Specifically, the EA discusses Johns Manville's preference for the South Route variation that Transco initially considered prior to filing its application, due to its relatively short length on its property, but explains that Transco had proposed the Filed Route in its application to avoid having an open bore pit under the South Route blocking access to Johns Manville's loading dock and a corresponding exit bore pit on the other side of I-95 being located in a wetland. While the EA notes Johns Manville's concerns that the Filed Route actually would be more disruptive to its loading dock and operations than the South Route, the EA concludes that Transco has proposed sufficient mitigation in connection with the Filed Route to minimize disruption to Johns Manville's business to the greatest extent possible. In addition, the EA also finds that the South Route does not provide a clear environmental advantage over the proposed Filed Route.

66. In its comments on the EA, Johns Manville argues that there are no overriding environmental concerns that would warrant the Commission approving the Filed Route, rather than the South Route, in the event the Modified Route cannot be constructed. One of the reasons cited in the EA for approval of the Filed Route rather than the South Route is that "based on Transco's field wetland delineations, the bore pit on the opposite side of I-95 along the south route variation would be located in a wetland."⁵² However, Johns Manville argues that the EA failed to provide any detailed observations or analysis of the nature of wetlands in question to determine whether the South Route would have significant, unavoidable impacts on the wetlands.

67. Johns Manville retained a wetlands consultant, Patricia Burns, to evaluate the wetlands at issue with respect to their extent and conservation value.⁵³ Johns Manville states that based on her analysis of historical mapping and onsite investigation, Ms. Burns concludes that the wetlands at issue on the east side of I-95 "would likely be assigned low conservation values upon closer agency inspection" as she found they are "small and disconnected; . . . surrounded by development and highways, dominated by non-native plants . . .; and appear to be created by man-made activities that have disturbed native

⁵¹ EA at 38.

⁵² EA at 38.

⁵³ Johns Manville retained the services of Wetlands and Environmental Technology, Inc. and its principal, Patricia Burns, who has conducted wetlands studies in New Jersey since 1988. Johns Manville attaches to its comments an affidavit of Ms. Burns presenting her findings.

soils.”⁵⁴ Johns Manville also states that Ms. Burns’s belief is that the installation of exit/entry bore pits on the wetlands site “would qualify for permanent or temporary impacts through the [New Jersey Department of Environmental Protection’s] wetlands permitting program” and that the EA failed “to provide any information to justify why the exit/entry pits, which typically create only temporary disturbances, could not be installed within uplands or permitted emergent (i.e., non-forested) wetlands areas on the [parcel in question].”⁵⁵ Thus, Johns Manville maintains that Transco’s use of the South Route rather than the Filed Route as the alternative route would have no significant effect on the wetlands east of I-95.

68. The Commission disagrees with Johns Manville that the existence of the subject wetlands does not provide justification for our declining to approve the South Route as the alternate route through Johns Manville’s property. Regardless of the degree of impact that locating the exit bore pit under the South Route in the wetlands on the east side of I-95 causes, or the quality or conservation value of the wetlands, they are nevertheless wetlands which require Transco to obtain necessary permits from the U.S. Army Corps of Engineers and the New Jersey Department of Environmental Protection in order to construct within the wetland, as the wetland meets the criteria for permitting requirements pursuant to the Clean Water Act.

69. Johns Manville has argued that the proposed 2.4 mile pipeline is already crossing a number of other wetlands and that as with those wetlands crossings, Transco should be able to mitigate any environmental impacts to these wetlands by following the Commission’s Wetland and Waterbody Construction and Mitigation Procedures.⁵⁶ However, none of those wetlands crossings involve installing a bore pit in the wetlands, which is very different than the trenching construction methods required to simply cross or traverse a wetland area. In fact, section VI.B.2.e of the Commission’s Wetland and Waterbody Construction and Mitigation Procedures, which Transco has incorporated for its project, limits construction equipment operating in wetland areas only to that necessary to clear the construction right-of-way, dig a trench, fabricate and install the pipeline, backfill the trench, and restore the construction right-of-way. It does not contemplate or encourage the siting of a bore pit, or the equipment necessary to install a bore pit, in wetlands. Unlike the trenching process, which is a relatively quick

⁵⁴ Johns Manville’s April 4, 2014 Comments on the Woodbridge Delivery Lateral Project Environmental Assessment at 7-8, quoting Affidavit of Patricia C. Burns.

⁵⁵ *Id.* at 8, quoting Affidavit of Patricia C. Burns.

⁵⁶ Johns Manville’s February 11, 2014 Motion to Strike, or in the Alternative, Answer to Prohibited Filing at 5.

construction method, the open bore pit required for the perpendicular crossing of I-95 would be in place for several weeks, thus potentially exacerbating impacts on wetlands. In addition, the preservation of wetlands, while the most compelling reason for avoiding pipeline construction in wetlands, is not the only consideration. Installing a bore pit in wetlands could jeopardize the structural integrity of the bore pit or complicate the construction process.

70. The Filed Route is the route Transco has selected to use as an alternative route across Johns Manville's property if it is unable to construct the Modified Route. The South Route advocated by Johns Mansville provides no clear environmental advantage over the proposed route. As determined in the EA, it creates greater environmental impacts than the Filed Route because it impacts the wetlands on the east side of I-95. Therefore, in the event Transco cannot obtain approval for its proposed diagonal HDD crossing of I-95 or the geotechnical study shows its proposal is not feasible and, thus, Transco cannot construct the Modified Route for those or any other reasons, the Commission approves the use of the Filed Route as an alternative route across Johns Manville's property. Environmental Condition No. 1 to this order allows Transco to modify its construction procedures and requires that Transco receive approval in writing from the Director of Office of Energy Projects before using the modification.

71. With respect to Transco's request for an additional staging yard, the Commission has determined that Transco's newly identified contractor staging yard is a previously disturbed area that does not impact any sensitive resources. Environmental Condition No. 12 ensures that Transco cannot use the area until we have completed our consultation under Section 106 of the National Historic Preservation Act (NHPA).

72. As discussed, *supra*, MTF and May Street express concerns that parking and truck access at their operating parcel would be impacted during construction. Transco states that it is exploring options to mitigate the impacts on MTF's properties, including providing shuttles to transport employees and visitors to and from the Operating Parcel. Because Transco has not yet determined what mitigation it will provide, the Commission has added Environmental Condition No. 17 to the environmental conditions attached to this order, which requires Transco to file results of its consultations with MTF and May Street regarding parking and truck access prior to construction.

73. MTF and May Street also raise concerns regarding the disturbance of the surface of the development parcel because they believe there may be historical fill material present on the development parcel that could be contaminated. As discussed in the EA, Transco developed an Unanticipated Discovery of Contamination Plan that would ensure

any contaminated soils discovered during construction are properly disposed of in accordance with federal and state regulations.⁵⁷

74. In Kaplan's comments concerning the pipeline route on property managed by its affiliate, Sugarbush, and the proposed pipeline's impact on their plans for future development of the property, Kaplan reiterates the comments submitted by Sugarbush, stating that Sugarbush suggested route variations to Transco that were not considered by either Transco or the Commission in the EA. Kaplan also provided more information about the development plans, stating that there is a "concept plan" for a mixed use development on the Sugarbush property.

75. As indicated in the EA, Sugarbush did not identify those potential route variations to the Commission, and Kaplan, similarly, does not identify them in its comments on the EA. However, as noted in the EA, in response to Sugarbush's concerns, Transco did move the proposed route on the Sugarbush property to be adjacent to a sewer easement on the northern edge of the property and the property line on the southern edge of the property.⁵⁸ In addition, the EA evaluated a route variation to further minimize impacts by moving the crossing of State Route 440 further east, but concludes that this change would have greater impacts on adjacent already-developed properties and, therefore, was not preferable to proposed route in this location.

76. As previously noted, the land is currently zoned industrial and no application for a zoning variance to change the zoning to mixed use has been filed with Edison Township. Nor have plans for development of the Sugarbush property been approved by Edison Township. Transco's route follows an existing sewer easement on the northern edge of the property, as well as the eastern edge of the property line. The Commission finds Transco's proposed route acceptable.

77. Finally, the SHPO submitted comments in response to the EA regarding Transco's cultural resources survey report submitted to the SHPO on January 8, 2014. The SHPO concurs that there would be no adverse effect on historic properties for the areas covered by the survey report. The Commission's staff will consult with the SHPO on the remaining areas that have not been surveyed to ensure compliance with the NHPA, consistent with Environmental Condition No. 12.

⁵⁷ EA at 9.

⁵⁸ EA at 38.

78. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Transco's application and supplements, and in compliance with the Environmental Conditions in Appendix B to this order, Commission approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

79. 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 and operation of facilities approved by this Commission.⁵⁹

80. The Commission on its own motion received and made 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 to Transco authorizing it to construct and operate the Woodbridge Delivery Lateral Project, as described and conditioned herein and as more fully described in the application and modified in its comments to the EA.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Transco's:

- (1) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (2) completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order in accordance with paragraph (b) of section 157.20 of the Commission's regulations; and

⁵⁹ 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).

(3) compliance with the environmental conditions listed in Appendix B of this order.

(C) Transco's incremental rates for transportation services under Rate Schedules FDLS and IDLS are approved, as discussed in the body of this order.

(D) Transco shall file actual tariff records reflecting the incremental rates no earlier than 60 days and no later than 30 days prior to the date the proposed facilities go into service.

(E) Transco must file with the Commission not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities, the negotiated rate agreement with CPV or a tariff record containing the essential terms of such an agreement, as discussed above.

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

(G) Prior to commencement of construction, Transco must execute a firm contract for volumes and service terms equal to those in the precedent agreement.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Interventions

Exelon Corporation
Calpine Energy Services, L.P.
Consolidated Edison Company of New York, Inc.
Consolidated Edison Company of New York, Inc. and
Philadelphia Gas Works
Johns Manville, a Berkshire Hathaway Company
The Municipal Gas Authority of Georgia and
The Transco Municipal Group
National Fuel Gas Distribution Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
NJR Energy Services Company
Piedmont Natural Gas Company, Inc.
PSEG Energy Resources & Trade LLC

Appendix B

Environmental Conditions for the Woodbridge Delivery Lateral Project

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of 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 and operation.

3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), 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**, Transco 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 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/sheets.

Transco's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Transco'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. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, 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 Transco'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
 - b. 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**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;

- b. how Transco 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, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Transco 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 Transco's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Transco 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. Transco 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/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**, Transco 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 Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities,** Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco 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.
11. **Within 30 days of placing the authorized facilities in service,** Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Transco 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. Transco **shall not begin construction** of facilities and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
 - a. Transco files with the Secretary:
 - i. remaining cultural resources survey reports and addendums;
 - ii. site evaluation reports and avoidance/treatment plans, as required; and
 - iii. comments on the cultural resources reports, addendums and plans from the New Jersey State Historic Preservation Office;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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

13. **Prior to construction**, Transco shall provide for the residences at milepost 0.47 and 0.48:
 - a. a description of how Transco will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
 - b. evidence of landowner concurrence.
14. **Prior to construction**, Transco shall file its traffic plan for review and written approval of the Director of OEP.
15. **Prior to construction**, Transco shall file the results of its consultation with Johns Manville regarding the location that is selected for temporary truck staging and parking for the Johns Manville facility.
16. **Prior to construction**, Transco shall file a horizontal directional drill (HDD) noise analysis, including all supporting detailed calculations, for all noise sensitive areas (NSAs) within one-half mile of each HDD entry and exit site for review and written approval of the Director of OEP. This analysis shall include:
 - a. the proposed length of time HDD activities would occur;

- b. a plot plan showing the distance and direction of the nearest NSAs;
 - c. background noise levels and estimated drilling noise contributions at the NSAs;
 - d. noise mitigation measures Transco will implement at each HDD entry or exit location where estimated drilling noise contributions would exceed a day/night sound level of 55 decibels, and the projected resulting noise levels with the mitigation measures employed; and
 - e. site-specific plans identifying any noise walls or barriers, equipment locations, equipment barriers, or any other noise mitigation measures.
17. **Prior to construction**, Transco shall file results of its consultation with the Musculoskeletal Transplant Foundation regarding a plan to maintain access and parking.