

149 FERC ¶ 61,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Clarksville, Tennessee

Docket No. CP14-101-000

ORDER ISSUING CERTIFICATE

(Issued October 9, 2014)

1. On March 7, 2014, the City of Clarksville Tennessee (Clarksville) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157, Subpart A of the Commission's regulations<sup>2</sup> requesting: (1) a limited jurisdiction certificate to construct and operate a natural gas pipeline from an interconnection with Texas Gas Transmission, LLC (Texas Gas) in Elkton, Kentucky to an interconnection with Clarksville's distribution facilities northeast of Clarksville, Tennessee; (2) blanket certificate authorization under Subpart F of Part 157 of the Commission's regulations; and (3) waivers of various Commission rate, accounting, and reporting requirements. As discussed below, the Commission will grant Clarksville's requested authorizations, subject to conditions.

**I. Background and Proposal**

2. Clarksville is a municipality and a local distribution company with an NGA section 7(f) service area determination.<sup>3</sup> Clarksville owns and operates a municipal

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<sup>1</sup> 15 U.S.C. § 717f(c) (2006).

<sup>2</sup> 18 C.F.R. Part 157, Subpart A (2014).

<sup>3</sup> *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074 (2014). Under NGA section 7(f), the Commission may determine the service area to which a natural gas company may enlarge or extend its facilities in such service area. Generally, the Commission issues section 7(f) determination to enable an entity which would be a non-jurisdictional local distribution company but for the fact that its facilities cross a state line to enlarge or expand its facilities to accommodate its local distribution functions,

(continued...)

distribution system that provides natural gas service to approximately 24,500 customers in and around Clarksville, and other facilities that serve the U.S. Army base at Fort Campbell in Montgomery and Stewart Counties, Tennessee, and Christian and Trigg Counties, Kentucky, and 16 commercial customers in Kentucky. Clarksville currently receives all of the gas for its local distribution customers through an interconnection with Tennessee Gas Pipeline Company, L.L.C. (Tennessee Gas Pipeline) approximately 26 miles from Clarksville's load center. Clarksville proposes to construct and operate a 20.8-mile, 12-inch diameter pipeline to interconnect with Texas Gas. The pipeline would enable Clarksville to transport up to 52,000 thousand cubic feet (Mcf) per day of natural gas supply from Texas Gas in order to improve the reliability of its natural gas service and to realize the benefits of competition associated with adding a second supply feed into its distribution system. It estimates that it will spend approximately \$19.6 million to construct the proposed pipeline.

3. Clarksville seeks a certificate to construct and operate the proposed facilities and a blanket certificate under section 157, Subpart F of the Commission's regulations authorizing it to undertake certain construction, operation, and replacement activities. Clarksville states that it intends to use the proposed facilities solely to receive gas supplies for non-jurisdictional local distribution and seeks exemption from the Commission's Part 284 open-access requirements. Accordingly, it does not propose any rates in conjunction with the proposed facilities and seeks waiver of various Commission rate, reporting, and accounting requirements.<sup>4</sup>

## **II. Notice, Interventions, Comments, and Answers**

4. Notice of Clarksville's application was published in the *Federal Register* on March 24, 2014 (79 Fed. Reg. 15,988). Atmos Energy Corporation (Atmos), the Attorney General of Kentucky (Attorney General), Todd County, Kentucky

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including to access alternative sources of supply without further Commission approval or regulation.

<sup>4</sup> Specifically, Clarksville requests waivers of 18 C.F.R. §§ 157.14(a)(10), (a)(11), (a)(14), (a)(16), (a)(17), and (a)(18), 260.2, Parts 201 and 250, and all other regulations that might otherwise apply.

(Todd County), and the Landowners Group and Individuals (Landowners)<sup>5</sup> filed timely, unopposed motions to intervene.<sup>6</sup>

5. Atmos requests the Commission not to permit Clarksville to use the proposed facilities to transport gas for any third parties. Todd County and Landowners protest the application, and the Attorney General supports the intervention of Todd County and other stakeholders. The Choctaw Nation of Oklahoma filed a comment noting that the proposed project is outside their area of interest. U.S. Senator Rand Paul and U.S. Representative Ed Whitfield filed comments urging the Commission to give Todd County's comments full and fair consideration. Clarksville filed an answer to the protests, the protesters filed an answer to Clarksville's answer, and Clarksville filed an answer to the protesters' answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, the Commission finds good cause to waive its rules and accept these pleadings because they provide information that has assisted us in our decision making.<sup>7</sup> The comments, protests, and answers are addressed below or in the environmental assessment (EA).

### **III. Discussion**

6. Clarksville proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission; therefore, the proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>8</sup>

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<sup>5</sup> Mervyn Caughlin, Faye Caughlin, Marilyn Sue Bouldin Frogue, Gregory Family Revocable Trust, Sadler Enterprises, Inc., Robert C. Miller, Paul Power, Geraldine Power, William E. West, William M. West, Sadler Brothers, C.B. Stahl, III, Eston W. Glover, Jr., and John Poindexter.

<sup>6</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2014).

<sup>7</sup> 18 C.F.R. § 385.214 (2014).

<sup>8</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

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

7. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>9</sup> The Certificate Policy Statement establishes 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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

8. 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 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

9. As discussed 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. As discussed herein, the proposed facilities will be operated as a supply line to receive gas for Clarksville's existing local distribution customers. Thus, this proceeding does not involve an issue of subsidization

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

as contemplated by the Certificate Policy Statement; we note that none of Clarksville's existing customers filed in opposition to its proposal.<sup>10</sup>

10. We also find that the proposal will not degrade service to Clarksville's existing customers. In addition, there will be no adverse impact on existing pipelines in the region or their captive customers because the proposal is not intended to transport gas for any third parties receiving service on existing pipelines.

11. As discussed in greater detail in the EA, the pipeline route is mostly adjacent to or within existing rights-of-way. Clarksville has been contacting landowners to obtain permission to conduct the necessary surveys and has implemented numerous route refinements requested by landowners. While Clarksville states that it has not tried to obtain any easements because its practice is to receive approval of a project before spending money on easement evaluation and negotiations, Clarksville states that it will negotiate in good faith to obtain easements and use the right of eminent domain only if it cannot reach agreements with landowners.<sup>11</sup> We find that Clarksville has designed the project to minimize any adverse impacts on landowners and surrounding communities.

12. The proposed facilities will improve Clarksville's system reliability by providing a second source of gas supply. Clarksville states that increasing the reliability of its system is important because currently, its entire natural gas supply would be lost if there were an outage: (1) on parts of Tennessee Gas Pipeline's system that serve Clarksville; (2) at its receipt point; or (3) anywhere along Clarksville's distribution facilities. Clarksville also states that the proposed facilities would introduce competition to its natural gas portfolio through access to alternative sources of natural gas.<sup>12</sup>

13. Based on the benefits the project will provide to Clarksville's local distribution customers and the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find that, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, Clarksville's proposed project is required by the public convenience and necessity, as conditioned in this order. In issuing this certificate, the

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<sup>10</sup> See, e.g., *El Paso Natural Gas Co.*, 95 FERC ¶ 61,176, at 61, 573 (2001); *Northwest Pipeline Corp.*, 94 FERC ¶ 61,101, at 61,415, *order denying reh'g*, 95 FERC ¶ 61,029 (2001).

<sup>11</sup> We note that a certificate under NGA Section 7 still gives Clarksville the ability to exercise the right of eminent domain under NGA section 7(h). See, *City of Duluth Public Works & Utilities Department*, 103 FERC ¶ 61,150, at P 31 (2003) (*Duluth*).

<sup>12</sup> See, *Duluth*, 103 FERC ¶ 61,150 at P 30.

Commission is asserting jurisdiction only with respect to the facilities authorized. The certificate authorization will not otherwise affect the non-jurisdictional status of any other operation in which Clarksville is currently engaged.

**B. Waivers**

14. Clarksville states that a requirement that it provide open-access transportation service under Part 284 of the Commission's regulations is not warranted for its situation as a municipality. Clarksville asserts that its application is comparable to the application the Commission approved in *Duluth*, 103 FERC ¶ 61,150, where the Commission granted a certificate that did not affect the non-jurisdictional status of Duluth's municipal operations and waived certain regulatory requirements.

15. Todd County and Landowners protest Clarksville's request for exemption from the Commission's Part 284 open-access requirements. The protesters contend that *Duluth* is distinguishable because: (1) Clarksville's proposed pipeline is four times the length of Duluth's and most of it is in Kentucky; (2) Clarksville's reliability concerns are not as compelling as those of Duluth, which had experienced lost service; (3) Clarksville may need to use eminent domain to obtain easements, whereas Duluth stated that it anticipated obtaining all required easements without exercising the right of eminent domain; and (4) Duluth did not involve parties seeking access to the proposed pipeline. Todd County notes that the Commission has implemented its policy of nondiscriminatory open access, even where the applicant seeks approval for a single-use or proprietary pipeline and regardless of potential or anticipated shipper demand.<sup>13</sup>

16. Clarksville asserts that the difference in the size of Duluth's and Clarksville's proposed facilities is immaterial, stating that its proposed pipeline will travel through a sparsely populated rural area and will therefore have relatively minor impacts. Clarksville states that the Commission: (1) found that it was reasonable for Duluth to pursue the increased reliability that access to an additional pipeline would provide regardless of the historical reliability of the facilities of its existing single source of gas; and (2) noted that at the time of its application, Duluth had secured easements for less than 30 percent of the affected land parcels and that Duluth's requested certificate gives it the right to eminent domain.<sup>14</sup> Clarksville asserts that the only requests that have been made to date for access to Clarksville's proposed pipeline – landowner requests for farm taps and Todd County's proposal to own and operate the pipeline with Clarksville as a

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<sup>13</sup> *NGO Transmission, Inc.*, 105 FERC ¶ 61,138 (2003); *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066 (2000); *Clear Creek Storage Co.*, 84 FERC ¶ 61,210 (1998); and *USG Pipeline Co.*, 82 FERC ¶ 61,117 (1998).

<sup>14</sup> *See, Duluth*, 103 FERC ¶ 61,150 at PP 30-31.

joint project in order to create an incentive for businesses to locate in Todd County – are not matters that could be settled pursuant to the Commission’s open-access requirements or that are even subject to the Commission’s jurisdiction.

17. Although the Commission waived its open-access requirement in *Duluth*, where there were no protests or bona fide requests for firm service from a third party, the Commission has generally not granted pipelines such proprietary status where parties have protested a request to waive the open-access requirement.<sup>15</sup> In light of the protests regarding open-access in this proceeding and to satisfy the requirements of Order No. 636,<sup>16</sup> we will condition our authorization granted herein to require that Clarksville file for a Part 284 open-access blanket transportation certificate within 30 days of receiving a bona fide request for firm transportation service. In the event of such a bona fide request for firm transportation service, Clarksville is required to comply with the Commission’s Part 284 reporting obligations and business practices. Thus, Clarksville shall maintain records to separately identify the original cost and related future depreciation on the facilities, since open-access transportation calls for cost-of-service accounting.

18. Clarksville also requests waiver of certain filing, reporting, and other regulatory requirements otherwise applicable to an interstate pipeline owner and operator. We have previously waived certain reporting and other regulatory requirements for limited-purpose pipelines.<sup>17</sup> Here, the circumstances are similar, provided Clarksville uses the proposed pipeline solely to deliver gas into its distribution system, and it is appropriate to waive reporting and other regulatory requirements otherwise applicable to an interstate pipeline owner and operator as requested.

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<sup>15</sup> *NGO Transmission, Inc.*, 105 FERC ¶ 61,138; *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066; *Clear Creek Storage Co.*, 84 FERC ¶ 61,210; and *USG Pipeline Co.*, 82 FERC ¶ 61,117.

<sup>16</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, *order on reh’g*, Order No. 636-A, FERC Stats. and Regs., 30,950, *order on reh’g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh’g*, 62 FERC ¶ 61,007 (1993), *aff’d in part and vacated and remanded in part Sub nom., United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>17</sup> *Freeport McMoRan Energy, LLC*, 115 FERC ¶ 61,201, at PP 24-26 (2006); *Transcontinental Gas Pipe Line Corp.*, 91 FERC ¶ 61,180 (2000); *See also B-R Pipeline Co.*, 89 FERC ¶ 61,312 (1999).

19. Clarksville, however, requests that we issue a certificate of limited-jurisdiction, which would exempt it from the assessment of annual charges pursuant to section 382 of our regulations based on the pipeline's transportation volumes, and thus obviate the need for it to file portions of FERC Form No. 2-A, which the Commission relies on to determine whether a pipeline company's annual throughput level meets the 200,000 Mcf threshold in section 382.102(a) of the regulations for waiving the applicable annual charges.<sup>18</sup> While this order exempts Clarksville from most regulatory requirements because it will use the proposed pipeline solely to transport its own gas, the proposed pipeline nevertheless is a fully jurisdictional facility. Thus, the certificate for the proposed pipeline is not a certificate of limited jurisdiction, and Clarksville is not exempt from annual charge assessments. We note that the certificate issued here will not affect the non-jurisdictional status of Clarksville's other facilities and activities.

20. The regulatory history of the annual charge regulations demonstrates that the annual charge exemption for companies holding certificates of "limited jurisdiction" was adopted to exempt companies, such as Hinshaw pipelines and local distribution companies (LDC), that use their non-jurisdictional facilities to provide limited services in interstate commerce authorized by the Commission.<sup>19</sup> There is no indication, however, that the Commission intended to exempt from annual charge assessments otherwise non-jurisdictional companies, like Clarksville, that operate certificated facilities that are fully subject to the jurisdiction of the Commission.<sup>20</sup> The filing requirements and thresholds

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<sup>18</sup> FERC Form No. 2 must be filed by a "major" natural gas company, defined as a company whose annual transportation volumes, including storage volumes, exceed 50 million Dth. FERC Form No. 2-A must be filed by a "nonmajor" company, defined as a company whose annual transportation volumes exceed 200,000 Dth but are less than 50 million Dth. See 18 C.F.R. §§ 260.1(b) and 260.2(b), respectively.

<sup>19</sup> See *Annual Charges Under The Omnibus Budget Reconciliation Act of 1986*, Order No. 472, FERC Stats. & Regs., ¶ 30,746, at 30,626-27 (1987). See also *Energy Corp. of America*, 141 FERC ¶ 62,151 (2012). In *Energy Corp.*, the Office of Energy Projects granted a gatherer a limited jurisdiction certificate to receive gas from an interstate pipeline and deliver it to an LDC at times when local production transported by the gatherer was insufficient to meet the LDC's needs. Since the gatherer would be using its non-jurisdictional facilities to provide the certificated service, the order appropriately described the certificate as a "limited jurisdiction certificate" and did not require the gatherer to file the FERC Form No. 2-A information that the Commission would have needed if it intended to assess annual charges based on the amount of jurisdictional transportation service provided on the gathering facilities.

<sup>20</sup> See *Atlas Pipeline Mid-Continent WestTex, LLC and Pioneer Resources USA, Inc.*, 143 FERC ¶ 61,043 (2013).

for filing these forms were established to reduce the burden on small companies. Absent a waiver based on financial hardship pursuant to 18 C.F.R § 382.105,<sup>21</sup> there is no reason any NGA company should be exempt from the Annual Charge Assessment if it meets the filing thresholds that are prescribed in 18 C.F.R § 382.102 (a). The Commission relies on Page 520 of the Form Nos. 2 and 2-A to determine whether a pipeline meets these thresholds. Accordingly, Clarksville is required to file Page 1 and Page 520 of Form 2-A for calendar year 2014 within 15 days from the date of this order.<sup>22</sup> Further, as discussed below, Clarksville is required to maintain its records consistent with the requirements of the Uniform System of Accounts.

### C. Environment

21. The Commission staff began its environmental review after approval for Clarksville to use the pre-filing process on August 28, 2013, in Docket No. PF13-17-000. As part of the pre-filing process, our staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) on October 8, 2013. The NOI was mailed to interested parties, including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. On October 22, 2013, the Commission staff held a public scoping meeting in Todd County, Kentucky, to provide the public with an opportunity to learn more about the project and to comment on associated environmental concerns. We received comments in response to the NOI and during the scoping meeting from U.S. Representative Ed Whitfield and U.S. Senator Rand Paul; the Kentucky Attorney General; Todd County; the Landowners; Clarksville; Mabry Farms; and three individuals. Five individuals provided comments at the scoping meeting. The primary issues raised concerned purpose and need, eminent domain, residential impacts, farmland restoration, potential impact on Conservation Reserve Program properties, groundwater impacts, pipeline safety, and requested pipeline route alternatives.

22. To satisfy the requirements of the National Environmental Policy Act,<sup>23</sup> our staff prepared an EA for Clarksville's proposal. The EA was prepared with the cooperation of the U.S. Army Corps of Engineers. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives. The EA addressed all substantive comments

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<sup>21</sup> Section 382.105 of the regulations, 18 C.F.R. § 382.105 (2014), provides for companies to file petitions for waiver of annual charges based on financial hardship.

<sup>22</sup> See *USG Pipeline Company, LLC*, 139 FERC ¶ 61,202, at P 21 (2012).

<sup>23</sup> 42 U.S.C. § 4321 et seq.

received in response to the NOI and during the scoping meeting.<sup>24</sup> The EA was issued for a 30-day comment period, mailed to all interested parties, and placed in the public record on June 27, 2014. The U.S. Fish and Wildlife Service (FWS), the Kentucky Department for Environmental Protection (Kentucky DEP), and Robert Daniel filed comments on the EA.

23. The FWS Kentucky Field Office states that the EA did not include three species (Coleman cave beetle, Price's potato bean, and Short's bladderpod) that were addressed in Clarksville's Habitat Assessment that was submitted to the FWS. The FWS reports that the Habitat Assessment identified no suitable habitat for these species in the project area, and that the project would not affect them. The FWS agrees with the EA's determinations regarding bald eagles and migratory birds. The FWS also concurs with the EA's determination<sup>25</sup> that the project is not likely to adversely affect five federally-listed endangered mussel species (fanshell, fluted kidneyshell, littlewing pearlymussel, ring pink, and slabside pearlymussel) and one mammal species (gray bat). The FWS also agrees with the EA's determination that the project would not harm the federally-proposed endangered northern long-eared bat. We concur and note that informal consultation under the Endangered Species Act<sup>26</sup> is complete for all the above species.

24. While the FWS concurs with the EA's determination that the project is not likely to adversely affect potential Indiana bat hibernacula habitat, it does not concur with the EA's determination regarding Indiana bat potential summer roost/foraging habitat. The FWS clarifies that Clarksville's proposal to conduct tree clearing between October 15th and March 31st would not directly affect the Indiana bat, but that there would be adverse indirect and cumulative impacts on the Indiana bat, if present, in the project area. The FWS recommends that Clarksville survey the project area for Indiana bats, which, according to FWS protocols, must be done during the summer. Because Clarksville's proposed construction schedule begins this fall and landowner access has been denied along much of the proposed route, however, the FWS acknowledges that conducting surveys to confirm the presence of Indiana bats is not practical. As a result, the FWS recommends requiring Clarksville to: (1) modify the proposed project to avoid impacts on potential Indiana bat habitat; (2) assume Indiana bat presence and have the Commission begin formal consultation with the FWS; or (3) assume Indiana bat presence and enter into a Conservation Memorandum of Agreement (MOA) with the FWS.

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<sup>24</sup> The EA at page 5 (Table 1) specifies locations of all discussions related to comments received during the scoping period.

<sup>25</sup> EA at pages 34 through 36.

<sup>26</sup> 16 U.S.C. § 1531 et seq.

25. The FWS believes modifying the project to avoid all impacts on potential Indiana bat habitat is not practical. In addition, if the Commission initiates formal consultation pursuant to section 7 of the Endangered Species Act, Commission staff must submit a Biological Assessment to the FWS. The FWS would then have up to 135 days to review the Biological Assessment and issue a Biological Opinion. Due to the amount of time required to complete formal consultation, the FWS acknowledges that formal consultation is not practical given Clarksville's desired fall 2014 construction timeframe.

26. The FWS states that entering into a MOA with the FWS would account for the incidental take of Indiana bats and allow Clarksville flexibility in addressing impacts on Indiana bat habitat. We agree. On August 19, 2014, Clarksville filed its request to the FWS stating its intent to enter into a Conservation MOA to address Indiana bat habitat impacts, but Clarksville has not yet completed this process. Therefore, we have revised the EA's recommendation (Environmental Condition 14 to this order) to require Clarksville to file its signed MOA with the FWS, and any agreed-upon mitigation, for review and written approval before beginning construction or mitigation.

27. Kentucky DEP expects Clarksville to ensure that surface water flow will not be lost when using the horizontal directional drill (HDD) method to cross Whippoorwill Creek and Elk Fork. As stated in the EA, Clarksville will cross these streams using an HDD method that involves trenchless drilling under them to avoid direct impacts on the stream banks or aquatic resources. Therefore, we anticipate no impacts on surface water flow. The EA further clarifies that Clarksville has agreed to use the stream crossing methods in the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), which include maintaining adequate stream flow to protect aquatic life.<sup>27</sup>

28. Kentucky DEP also expects Clarksville to: (1) notify Kentucky DEP's Division of Water regional office at least seven days before disturbing any stream or wetland; (2) give the Division of Water stream crossing plans for three streams it would cross; and (3) include a provision in its required Groundwater Protection Plan that Clarksville notify the Division of Water of all spills and bypasses as soon as possible. We note that these requirements do not conflict with our EA<sup>28</sup> or this order.

29. Kentucky DEP expects Clarksville to abide by the State of Kentucky's requirement to file a project-wide Stream Construction Permit Application to ascertain potential floodplain impacts, as well as a project-wide Groundwater Protection Plan,

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<sup>27</sup> EA at pages 29 through 30.

<sup>28</sup> EA at page 14. Table 7 lists permits/consultations/approvals necessary for construction, including permits from the Kentucky DEP.

given that Clarksville would use the HDD method to cross waterbodies. The EA discussed the permits and approvals Clarksville anticipates obtaining from the Division of Water, including a water quality certification under section 401 of the Clean Water Act.<sup>29</sup> Clarksville will incorporate state-required mitigation into its construction plans in concert with the environmental conditions attached to this order. Environmental Condition 6 to this order requires Clarksville to submit its Implementation Plan, which will include all construction plans, including incorporation of state permit requirements prior to commencement of construction. In addition, Environmental Condition 9 to this order requires Clarksville to file documentation that it has received all applicable federal authorizations (e.g., section 401 water quality certification).

30. Kentucky DEP questions the EA's environmental recommendation 13.b (included as Environmental Condition 13 to this order) requiring Clarksville to report damaged potable water supplies (including domestic water wells) to the Commission within one year of completion of construction. Kentucky DEP requests that Clarksville notify the Division of Water immediately if it impacts domestic water supplies.

31. We clarify that the report required by Environmental Condition 13 is intended to provide summary documentation, within one year of completion of construction, of repairs made to damaged potable water supplies so that Commission staff can ensure that proper measures were taken. We acknowledge Kentucky DEP's requirement that Clarksville immediately notify it of any damaged potable water supplies and note that Environmental Conditions 7 and 8 to this order require Clarksville's environmental inspector to document compliance with any Kentucky DEP environmental conditions/permit requirements and require Clarksville to report such incidents to the Commission in its biweekly construction status reports.

32. Kentucky DEP asserts that Clarksville must dispose of all solid waste at a permitted facility and properly address any encountered underground storage tanks and asbestos, lead paint, and/or other contaminants. We note that Clarksville's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan)<sup>30</sup> states that any construction debris/waste is subject to compliance with all applicable survey, landowner or land management agency approval, and permit requirements. As clarified in the EA, Clarksville's Plan conforms to the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*. Clarksville's Procedures require Clarksville's construction contractors to structure their operations to be ready to promptly and effectively clean up spills of fuel and other hazardous materials (including underground storage tanks and

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<sup>29</sup> EA at page 14.

<sup>30</sup> EA at page 8.

contaminants) and require Clarksville to use reporting, notification, and cleanup methods required by federal, state, and local agencies.

33. Finally, Kentucky DEP provides details of its fugitive dust and open burning regulations, stating that it generally prohibits open burning, but that Clarksville may use open burning for certain purposes. The EA notes that, pursuant to section 4 of the Kentucky Administrative Regulations at 63:005, “fires set for disposal of natural growth for land clearing and maintenance...” are exempt from the open burning prohibition. Therefore, Clarksville’s use of open burning for these purposes appears to be exempt from Kentucky state regulations. The EA further notes that there are no Todd County restrictions on open burning, and that Clarksville would use several measures to minimize emissions from its open burning, such as monitoring burn piles until burning is complete or the fire is extinguished, minimizing the number and size of burn piles to the extent practicable, and excavating a burn pit and surrounding the pit with an earthen berm to reduce the risk of forest fire and off right-of-way damage.<sup>31</sup> Finally, the EA states that Clarksville would comply with Kentucky state fugitive dust regulations by using best management practices including, but not limited to, watering exposed soil surfaces.<sup>32</sup>

34. Robert Daniel opposes the proposed pipeline, arguing against the use of eminent domain on grounds that there are no local benefits that would offset risks of pipeline leaks and explosions. The EA discusses Clarksville’s potential use of eminent domain as a component of Clarksville’s overall procedure for obtaining property access, which also includes negotiation and compensation.<sup>33</sup> Regarding the safety of pipeline operations, Clarksville’s pipeline design and operations will comply with all applicable U.S. Department of Transportation (DOT) requirements including: (1) using welding, pipeline coating, and a cathodic protection system designed to retard corrosion; (2) using over-pressure protection features located at Pressure Reducing Valve Station 1; (3) conducting routine internal and external pipeline inspection to detect any faults in the operated pipeline; (4) odorizing natural gas accepted into its pipeline; and (5) establishing a multi-part emergency plan that would coordinate communication and response procedures with company and municipal emergency response entities.<sup>34</sup> The EA concludes, and we agree, that Clarksville’s required compliance with DOT regulations will minimize the safety risk to the nearby public.

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<sup>31</sup> EA at pages 53 and 56.

<sup>32</sup> EA at page 53.

<sup>33</sup> EA at page 45.

<sup>34</sup> EA at pages 59 through 67.

35. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Clarksville'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.

36. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>35</sup>

37. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Clarksville pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate the project facilities, as described and conditioned herein, and as more fully described in the application.

(B) A blanket construction certificate is issued to Clarksville under Subpart F of Part 157 of the Commission's regulations.

(C) The certificate issued in Ordering Paragraph (A) is conditioned on Clarksville's:

(1) completion of construction of the proposed facilities and making them available for service within one year of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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<sup>35</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Pub. Serv. Comm'n*, 894 F.2d 571 (2d Cir.1990); and *Iroquois Gas Transmission Sys., L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) compliance with the environmental conditions in the appendix to this order;

(D) The certificate authorization issued in Ordering Paragraph (A) will not otherwise affect the non-jurisdictional status of any other operation in which Clarksville is currently engaged.

(E) Clarksville's request for waivers of all other filing, reporting, accounting, and compliance requirements, as described in the order and in the application, is granted in part subject to the filing requirement of Page 1 and Page 520 of Form 2-A for the calendar year 2014 as explained above.

(F) Clarksville shall file an application for an open access blanket certificate pursuant to Part 284 of the Commission's regulations within 30 days of receiving a bona fide request for firm transportation service.

(G) Clarksville 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 Clarksville. Clarksville shall file written confirmation of such notification with the Secretary of the Commission (Secretary) with 24 hours.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

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

1. Clarksville shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Clarksville must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the 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 impacts resulting from project construction and operation.
3. **Prior to any construction**, Clarksville 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 or plot plans. **As soon as they are available, and before the start of construction**, Clarksville 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.

Clarksville's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Clarksville'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. Clarksville 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 work space allowed by Clarksville'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 the authorization and before construction begins**, Clarksville shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Clarksville must file revisions to the plan as schedules change. The plan shall identify:

- a. how Clarksville 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 Clarksville 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 location and dates of environmental compliance training and instructions Clarksville 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 Clarksville's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Clarksville will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Clarksville shall employ at least one team of EIs per construction spread. The EIs 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**, Clarksville 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 Clarksville's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a 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 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 Clarksville from other federal, state, or local permitting agencies concerning instances of noncompliance, and Clarksville's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Clarksville shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Clarksville 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**, Clarksville 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 Clarksville has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Clarksville shall file with the Secretary the location by milepost of all private wells within 150 feet of pipeline construction or blasting activities. Clarksville shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. **Within 30 days of placing the facilities in service**, Clarksville shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.
13. Clarksville shall:
  - a. provide an immediate temporary water source, with the well owner's permission, in the event that a private well or water supply system providing potable water is adversely affected by construction related activities, until the well or system is repaired or replaced; and
  - b. replace any potable water supply system that it damages during construction and cannot be repaired to its former capacity and quality. **Within one year of completion of construction**, Clarksville shall file a report with the Secretary identifying all potable water supply systems damaged by construction and how they were repaired.
14. Clarksville shall not begin construction activities until:
  - a. Clarksville files the signed Conservation MOA between the FWS and Clarksville with the Secretary, and any mitigation measures agreed upon to further reduce impacts on Indiana bats;
  - b. the Commission staff completes its consultation with the FWS regarding the Indiana bat; and
  - c. Clarksville has received written notification from the Director of OEP that construction or use of mitigation may begin.
15. **Prior to construction**, Clarksville shall complete its consultation with the U.S. Farm Service Agency (FSA) regarding impacts on Conservation Reserve Program and other FSA-administered lands, and file with the Secretary, documentation of this consultation and of any compliance measures required by the FSA.

16. **Prior to construction**, Clarksville shall develop a visual screening plan for Pressure Reducing Valve Station 1, and file the plan with the Secretary for review and written approval by the Director of OEP.
17. Clarksville shall not begin construction of facilities and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
  - a. Clarksville files with the Secretary:
    - (1) remaining cultural resources survey report(s) and addendum(s);
    - (2) site evaluation report(s) and avoidance/treatment plan(s), as required;
    - (3) comments on the cultural resources reports, addendums and plans from the Kentucky and Tennessee State Historical Preservation Offices (SHPO);  
and
    - (4) documentation that the reports and the SHPOs' responses have been sent to the Cherokee Nation.
  - b. the U.S. Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
  - c. the Commission staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Clarksville 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.”**

18. Clarksville shall file a noise survey with the Secretary **no later than 60 days** after placing Pressure Reducing Valve Station 1 in service. If a full load condition noise survey is not possible, Clarksville shall provide an interim survey at the maximum possible load and provide a full load survey within **6 months**. If the noise attributable to the operation of all of the equipment at Pressure Reducing Valve Station 1 under interim or full load conditions exceeds an day-night sound level ( $L_{dn}$ ) of 55 decibals on the A-weighted scale (dBA) at any nearby noise sensitive areas (NSAs), Clarksville shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. Clarksville shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

19. Clarksville shall file, **in the biweekly construction status reports** (required by environmental condition 8 above), the following for the horizontal directional drill entry and exit sites that could exceed an  $L_{dn}$  of 55 dBA:
  - a. noise measurements from the nearest NSA, obtained at the start of drilling operations;
  - b. noise mitigation that Clarksville implemented at the start of drilling operations; and
  - c. any additional mitigation measures that Clarksville would implement if the initial noise measurements exceeded an  $L_{dn}$  of 55 dBA at the nearest NSA.