

152 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC

Docket No. CP14-553-000

ORDER ISSUING CERTIFICATE

(Issued August 28, 2015)

1. On September 25, 2014, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate a new compressor station in Ouachita Parish, Louisiana, (Bosco Compressor Station) and make modifications to four existing compressor stations in Louisiana and Indiana and an existing pipeline interconnection adjacent to the proposed Bosco Compressor Station (Ohio-Louisiana Access Project). The Ohio-Louisiana Access Project is designed to enable Texas Gas to flow natural gas on its system bi-directionally in order to accommodate customers' transportation requests. Texas Gas also requests that the Commission make a predetermination that it may roll the costs of the project into its system rates in its next NGA general section 4 rate case.

2. For the reasons discussed below, the Commission will authorize Texas Gas's proposals, subject to certain conditions.

I. Background and Proposal

3. Texas Gas is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. It is a limited liability company organized and existing under Delaware law. Texas Gas's natural gas

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Part 157 (2014).

³ 15 U.S.C. § 717a(6) (2012).

transmission system extends from Texas and Louisiana, through Mississippi, Arkansas, Tennessee, Kentucky, Illinois, and Indiana, to its terminus in Ohio.

4. Texas Gas states that the proposed Ohio-Louisiana Access Project is intended to meet an increased demand by its customers for new transportation capacity to transport natural gas supplies being produced near the northern end of its system to additional market destinations in the midwest and south. Texas Gas proposes to modify its existing pipeline system, with limited construction of new facilities, to enable it to provide up to 758,000 million British thermal units (MMBtu) per day of firm transportation service from receipt points in Lebanon, Ohio, in a north-to-south direction to serve new markets in the midwest and south, while retaining its current capability to flow gas in a south-to-north direction.

5. Specifically, Texas Gas proposes to: (1) construct and operate the new Bosco Compressor Station in Ouachita Parish, Louisiana; (2) modify the existing pipeline interconnection between Texas Gas and Gulf South Pipeline Company, LP (Gulf South) at the proposed Bosco Compressor Station (the Gulf South-Bosco Meter Station) to allow bi-directional flow; and (3) make certain yard and station modifications to provide for bi-directional flow capabilities at the existing Dillsboro Compressor Station in Dearborn County, Indiana, and the existing Columbia, Pineville, and Eunice Compressor Stations in Caldwell, Rapides, and Acadia Parishes, Louisiana, respectively.

6. Texas Gas states that the new Bosco Compressor Station will consist of: (1) one 10,915 horsepower (hp) Solar Taurus 70 turbine compressor unit designed to deliver approximately 175,000 MMBtu of gas per day from Texas Gas' mainline to Gulf South via the proposed modified Gulf South-Bosco Meter Station; (2) yard and station piping between the compressor station and the Gulf South-Bosco Meter Station; and (3) other yard and station piping and appurtenant auxiliary facilities and buildings. Texas Gas states that the Bosco Compressor Station, which is not a mainline unit, will allow gas on Texas Gas to be compressed to a pressure high enough to enter the Gulf South system.

7. Texas Gas proposes to modify the existing Gulf South-Bosco Meter Station to allow for bi-directional flow so that the meter station can flow gas from Texas Gas to Gulf South, as well as in the same day flow gas from Gulf South to Texas Gas. To provide this bi-directional flow at the Gulf South-Bosco Meter Station, Texas Gas proposes to: (1) utilize the existing 30-inch tap to run piping and fittings to the proposed Bosco Compressor Station; (2) run yard and station piping and fittings from the Bosco Compressor Station to the Gulf South bi-directional valve switching skid; and (3) upgrade the existing Texas Gas remote terminal unit utilizing the existing building.

8. With respect to the modifications to the pipeline's four existing compressor stations, Texas Gas proposes to install within the yard of each compressor station, yard and station piping of varying diameters, and various valves, fittings, and other auxiliary

facilities in order to allow each compressor station to flow the proposed quantities of gas north to south, while retaining the existing capability to flow gas south to north, as currently configured. Texas Gas states that these modifications will provide it with the flexibility to effectively and reliably flow gas in either direction.⁴ Texas Gas estimates that the total capital cost of all of the proposed facilities is approximately \$51.9 million.⁵

9. Texas Gas states that in the fall of 2013, it began negotiating with certain customers who desired south-bound transportation capacity on its system, and on October 8, 2013, it provided notice that certain unsubscribed capacity would be reserved for the Ohio-Louisiana Access Project beginning June 1, 2016.⁶ Texas Gas entered into a binding precedent agreement with Sabine Pass Liquefaction, LLC (Sabine) for an ultimate 300,000 MMBtu per day of firm transportation service.⁷ Subsequent to entering into the precedent agreement with Sabine, Texas Gas held a binding open season from November 25, 2013, through January 13, 2014, which resulted in six additional customers executing binding precedent agreements for 326,000 MMBtu per day of service, for a total subscription of 626,000 MMBtu per day of firm transportation service under the project.⁸ Texas Gas asserts that these commitments represent approximately

⁴ The proposed modifications at the Eunice Compressor Station will also allow that station the additional flexibility to flow gas north to south or “free flow” gas south, (i.e., flow gas using only the pressure differential from the source of the gas to another point on the pipeline, without the use of compression facilities). *See* Texas Gas Application at 9.

⁵ *See* Texas Gas Application, Exhibit K.

⁶ Texas Gas reserved 162,000 MMBtu per day on its mainline from Lebanon, Ohio, to its Bastrop Compressor Station (Bastrop) in Morehouse Parish, Louisiana, and 126,800 MMBtu per day on its mainline from Bastrop to the Eunice Compressor Station in Acadia Parish Louisiana.

⁷ Sabine executed a precedent agreement for 150,000 MMBtu per day of firm transportation service as of the service commencement date, and thereafter increasing to 300,000 MMBtu per day of service for a primary term of 10 years.

⁸ The six additional shippers are: R.E. Gas Development, LLC (100,000 MMBtu), Gulfport Energy Corporation (50,000 MMBTU), DTE Energy Trading, Inc. (46,000 MMBtu), Public Energy Authority of Kentucky (10,000 MMBtu), Louisville Gas and Electric Company (60,000 MMBtu), and Jay-Bee Production Co., by its agent DMRB Services, LLC (one precedent agreement for 25,000 MMBtu and one for

(continued ...)

83 percent of Texas Gas's maximum firm service capability (758,000 MMBtu per day) using the project facilities, and that a portion of the remaining 132,000 MMBtu per day of service has been subsequently subscribed by SABIC Innovative Plastics Mt. Vernon, LLC (SABIC), an industrial customer who will be served by the Southern Indiana Market Lateral Texas Gas proposes in its pending Docket No. CP15-14-001 to construct in Henderson County, Kentucky, and Posey County, Indiana.⁹

10. Texas Gas proposes to charge its existing system rates under its Rate Schedule FT as the recourse rates for the project. In addition, Texas Gas seeks a predetermination that it may roll the costs associated with the Ohio-Louisiana Access Project into its system rates in a future NGA general section 4 rate case. All of the project shippers signing precedent agreements have elected to pay a negotiated rate.

II. Notice, Interventions, Protests, and Comments

11. Notice of Texas Gas's application was published in the *Federal Register* on October 16, 2014, with interventions and protests due on October 30, 2014.¹⁰ 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 Rules of Practice and Procedure.¹¹

12. Conservation organizations Allegheny Defense Project, the Ohio Valley Environmental Coalition (Ohio Valley), Heartwood, and the Freshwater Accountability Project (Freshwater) each filed untimely motions to intervene in both the instant case and in Texas Gas's Southern Indiana Market Lateral proceeding, Docket No. CP15-14-000, in a single motion for both cases. Each organization maintains that it had only become

35,000 MMBtu). The primary terms for the agreements range from 10 to 20 years. See Texas Gas Application at 6-7.

⁹ Texas Gas originally filed an application for its Southern Indiana Market Lateral Project in Docket No. CP15-14-000 on November 12, 2014 to provide service to SABIC and another industrial customer, Midwest Fertilizer Company, LLC (Midwest). After Midwest did not receive approval from its board of directors to participate in the project, Texas Gas filed an amended application on March 30, 2015 in Docket No. CP15-14-001, scaling back the proposed facilities to accommodate only SABIC.

¹⁰ 79 Fed. Reg. 62,127 (Oct. 16, 2014).

¹¹ 18 C.F.R. § 385.214 (2015). Intervenor Louisville Gas and Electric Company filed a statement in support of the project with its motion to intervene.

aware of the Ohio-Louisiana Access Project when it saw the Commission's notices of intent to prepare environmental assessments for the proposed project and the Southern Indiana Market Lateral Project published in the *Federal Register*,¹² and that its intervention will not disrupt the proceedings or cause any prejudice to existing parties.¹³ In its answer, Texas Gas states that it does not oppose the untimely requests of Allegheny Defense Project, Ohio Valley, Heartwood, and Freshwater to intervene in the Ohio-Louisiana Access Project.

13. The Commission finds that Allegheny Defense Project, Ohio Valley, Heartwood, and Freshwater have each demonstrated an interest in this proceeding and that granting their untimely motions to intervene will not delay, disrupt, or unfairly prejudice other parties to the proceeding. Accordingly, the Commission grants the untimely motions to intervene.¹⁴

14. Finally, intervenor Atmos Energy Corporation (Atmos) filed a protest to Texas Gas's application, and joint and several intervenors Western Tennessee Municipal Group, Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities

¹² Two separate NOIs for the proposed project and the Southern Indiana Market Lateral Project were issued on January 9, 2015; a supplemental NOI was issued on February 10, 2015, in Docket No. CP15-14-000 for the latter project. Allegheny Defense Project moved to intervene in the instant case on February 14, 2015, while the other organizations moved to intervene on February 25, 2015. Also on February 25, 2015, Allegheny Defense Project, Ohio Valley, Heartwood, and Freshwater jointly filed their scoping comments in Docket Nos. CP14-553-000 and CP15-14-000 in a single pleading for both cases. The deadline set by the NOI for the submission of environmental scoping comments in this case was February 8, 2015.

¹³ While Texas Gas stated in its March 2, 2015 answer to the late motions to intervene of these entities that it does not oppose the untimely requests of Allegheny Defense Project, Ohio Valley, Heartwood, and Freshwater to intervene in the Ohio-Louisiana Access Project proceeding, it does object to the movants' use of a single motion to intervene in both this proceeding and the Southern Indiana Market Lateral Project proceeding. We note that no party requested consolidation of the two dockets, and they remain separate and unconsolidated proceedings. The Commission will consider each of the movants' motions to intervene as two separate motions by each entity in each proceeding.

¹⁴ See 18 C.F.R. § 385.214(d) (2015).

(together, Cities)¹⁵ filed comments on the application. Atmos, a natural gas distributor in eight states and firm transportation customer of Texas Gas, objects solely to Texas Gas's request for a predetermination that it may roll the costs of the project into its system rates in its next NGA general section 4 rate case, alleging that it is premature for Texas Gas to seek a rolled-in rate predetermination now. In its comments, Cities seeks additional information regarding the nature of the flows to be provided under the project, and raises concerns regarding the impact of the project on existing customers' quality of service and on fuel usage and fuel rates.

15. On November 14, 2014, Texas Gas filed an answer to the protests of Atmos and Cities. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹⁶ our rules do provide that we may, for good cause, waive this provision.¹⁷ Since Texas Gas's answer provides information that has assisted the Commission in its decision-making process, the Commission will, for good cause, waive the regulatory proscription against answers in this case and accept its response. The issues raised in Atmos's protest and Cities' comments are addressed below.

III. Discussion

16. 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.¹⁸

A. Application of the Certificate Policy Statement

17. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁹ The Certificate Policy Statement establishes criteria for

¹⁵ Cities are captive, municipal distributor customers of Texas Gas; Western Tennessee Municipal Group is a group of 13 such customers and the Kentucky Cities are comprised of the Cities of Carrollton and Henderson, Kentucky.

¹⁶ See 18 C.F.R. § 385.213(a)(2) (2015).

¹⁷ 18 C.F.R. § 385.101(e) (2015).

¹⁸ 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

18. 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 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.

Subsidization

19. 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. Texas Gas proposes to charge its existing system rates as the initial recourse rates for transportation service utilizing the capacity created by the proposed project facilities. As discussed, *infra*, Texas Gas has demonstrated that the projected revenues to be generated under its proposed rates for the Ohio-Louisiana Access Project exceed the cost of service associated with the project facilities. Therefore, the Commission finds that Texas Gas' existing customers will not subsidize the project, and the threshold requirement of no subsidization is met.

Existing Customers and Existing Pipelines and Their Customers

20. Texas Gas maintains that the proposed Ohio-Louisiana Access Project will have no adverse effect on the quality of service provided to its existing customers. However, Cities in its comments asserts that Texas Gas has not explained in detail how the reverse and bi-directional flows created by the project will operate such that existing south-to-north services will continue unaffected. Cities also states that it is not clear whether the north-to-south flows made possible by the proposed project are backhauls or forward hauls, since the application does not use the term "backhaul" and new flows would

suggest that they are forward hauls. Cities asks for clarification as to how the north-to-south transactions will be classified, and more detailed information regarding how the operation of Texas Gas's system will change as a result of the proposed project.²⁰

21. In its answer, Texas Gas clarifies that the project is adding capacity that will physically flow gas in the north-to-south direction.²¹ Thus, the new flows would be forward hauls, and not backhauls. However, Texas Gas also clarifies that for purposes of the application of its tariff to the new service, all of the project's firm transportation agreements will be considered "backhaul" agreements, since Texas Gas's currently effective FERC NGA Gas Tariff defines the flow of gas from north to south as a backhaul.²²

22. Further, in its data response, Texas Gas states that the existing south-to-north flow capabilities will be maintained when the proposed project becomes operational, including measurement capability at primary and secondary receipt points, and that no revisions to any existing shippers' primary or secondary delivery or receipt points will be necessary as a result of the reversal of flow.²³ Texas Gas also explains that existing south-to-north customers will retain their ability to change primary receipt and delivery points within their primary firm capacity rights, subject to available capacity at requested receipt and delivery points. They may also utilize non-primary receipt points within their firm capacity rights on a secondary basis.²⁴ Texas Gas submitted information and supporting workpapers showing that it will be able to satisfy the primary firm service rights of its existing shippers.²⁵

²⁰ Cities' October 30, 2014 Comments at 3-4.

²¹ Texas Gas November 14, 2014 Answer at 7.

²² Texas Gas December 15, 2014 Data Request Response to Question 3. Moreover, as discussed below, Texas Gas is proposing to use its currently effective backhaul rate applicable to north-to-south backhauls as the recourse rate for service using the project facilities.

²³ Texas Gas May 4, 2015 Data Request Response to Question 1.

²⁴ Texas Gas May 4, 2015 Data Request Response to Question 2.

²⁵ The Commission notes that a shipper's entitlement to receipt and delivery points are limited to primary firm points. Access to secondary receipt and delivery points is only available to the extent those points have available capacity. *See, e.g., Transcontinental Gas Pipeline Corp.*, 104 FERC ¶ 61,171, at P 25 (2003), *order on reh'g*

23. Texas Gas has provided information showing that during design day operating conditions, the pipeline will be able to satisfy its existing customers' primary service rights. Staff's review of such information confirms that Texas Gas has properly designed the facilities to provide the proposed services without adversely impacting existing shippers. Texas Gas also states that it has reviewed its FERC NGA Gas Tariff and believes that no tariff changes are required at this time to implement the transactions as contracted under the precedent agreements.²⁶

24. The bi-directional flow capability and additional compression created by the project will provide access to new supply sources, thereby diversifying available supply sources for existing customers, as well as provide additional transportation capacity that existing customers will be able to use to reach new markets. Based on all the above, the Commission concludes that there will be no adverse impacts from the project on Texas Gas's existing customers.²⁷

25. In addition, the Commission finds that the proposed project will have no adverse impacts on other existing pipelines or their captive customers. There is no evidence that the project will be replacing firm transportation service on any other pipeline. Further, no pipelines or their captive customers have protested Texas Gas's application. Consequently, the Commission finds that there will be no adverse impacts on other pipelines or their captive customers from the project.

Landowners and Communities

26. Texas Gas states that the only land it must acquire for the permanent operation of the project facilities is the land required for the proposed new Bosco Compressor Station. Texas Gas asserts that the Bosco Compressor Station will be constructed on a 19.13-acre parcel of agricultural land adjacent to the existing Gulf South-Bosco Meter Station, on which it intends to acquire a 99-year perpetual easement from the property's owner.²⁸ Texas Gas maintains that the proposed Bosco Compressor Station and an access road to

107 FERC ¶ 61,156, at P 11 (2004) ("The shipper has no guaranteed firm right to use these secondary points, however, since shippers using their primary firm capacity have priority."), *aff'd*, *Exxon Mobil Corp. v. FERC*, 430 F.3d 1166 (D.C. Cir. 2005).

²⁶ Texas Gas December 15, 2014 Data Request Response to Question 5.

²⁷ Some of Texas Gas' existing customers are also project shippers.

²⁸ See Texas Gas Application, Exhibit F-1, Resource Report No. 1 at 1-4. See also, Texas Gas Application at 7.

the station will require a total of 15 acres for its permanent operation – 11.7 acres for the compressor station itself and 3.3 acres for a permanent access road to the station.²⁹ Texas Gas indicates that neither the proposed piping and facility modifications at the existing Gulf South-Bosco Meter Station, nor the proposed yard and station pipeline modifications at the existing Dillsboro, Columbia, Pineville, and Eunice Compressor Stations, will result in new permanent land impacts, since no new physical facilities will be placed outside of any of the existing compressor station yards.

27. The Commission finds that Texas Gas has designed the Ohio-Louisiana Access Project to minimize adverse effects on landowners and nearby communities. With the exception of the new Bosco Compressor Station, the proposed project utilizes only minor modifications to existing infrastructure to create the additional capacity. All permanent facilities proposed at the existing meter and compressor stations, and virtually all the associated construction activity, will be confined within the property boundaries of those existing facilities. With respect to the new Bosco Compressor Station, Texas Gas will construct the compressor station on agricultural land, in an area that has been previously disturbed by the construction and operation of the adjacent Gulf South-Bosco Meter Station. There are no indications that Texas Gas will need to rely on eminent domain to obtain rights to that property, as the owner has neither intervened in the proceeding, nor protested the project. In addition, Texas Gas's acquisition of temporary construction rights-of-way should be limited.³⁰ Further, the entire project will permanently impact a total of only 15 acres of land (for the permanent operation of the Bosco Compressor Station and access road, as noted above). Accordingly, the Commission finds that there

²⁹ Texas Gas proposes to permanently widen an existing 20-foot-wide gravel road within its property or easement boundary by 10 feet, resulting in 3.3 acres of new permanent land impact (during construction, the road will be expanded to a width of 50 feet (5.48 total acres) to provide construction access to the compressor station). *See* Texas Gas Application, Exhibit F-1, Resource Report No. 8 at 8-5.

³⁰ Although construction of the project will impact 120 acres of land, Texas Gas asserts that only 4.0 acres of that land are workspaces outside of its existing facility or easement property boundaries (1.28 acres at the Gulf South-Bosco Meter Station, 0.61 acres at the four existing compressor stations, and 2.18 acres at the access road site). No landowners affected by the construction of the project facilities have filed adverse comments or protests with the Commission regarding the locations of the proposed project. Construction of the proposed Bosco Compressor Station and access road will affect 24.61 acres of land (19.13 acres for the compressor station and 5.48 acres for the access road). *See* Texas Gas Application, Exhibit F-1, Resource Report No. 1 at 1-4. *See also*, Texas Gas Application at 12.

will be minimal economic impact on landowners and surrounding communities from Texas Gas's proposed project.

28. Texas Gas has entered into long-term precedent agreements for a substantial portion of the design capacity of the project and none of the project costs will be borne by existing customers.³¹ The proposed project will provide new transportation capacity to reach additional markets, diversify gas supply options for existing and future customers of Texas Gas and customers on other interstate pipelines which interconnect with Texas Gas, and provide new interconnects that will improve the interconnectivity of the interstate grid. Based on the above benefits of the project and the minimal adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Texas Gas's proposed Ohio-Louisiana Access Project, subject to the conditions in this order.

B. Rates

Initial Recourse Rates

29. As noted above, Texas Gas proposes to utilize its existing Rate Schedule FT rates as the initial recourse rates for the proposed north-to-south transportation service using the project capacity. Texas Gas calculated an incremental cost-based daily firm reservation charge of \$0.0433 per MMBtu to recover the project's cost of service,³² which is less than its currently effective maximum firm transportation charge of \$0.0794 per MMBtu for service from Zone 4 to Zone SL under Rate Schedule FT.³³ Texas Gas asserts that Commission policy requires it to charge its existing generally

³¹ As stated *supra*, the binding precedent agreements with the seven project shippers represent approximately 83 percent of the maximum capacity that will be provided by the project facilities.

³² Texas Gas states that it used billing determinants reflecting the maximum incremental capacity of the proposed facilities (758,000 MMBtu per day) to calculate this rate.

³³ Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs, Section 4.1, Currently Effective Rates – FT, 7.0.0.

applicable transportation rates when the incremental rate to recover mainline expansion costs would be less than its generally applicable system rate.³⁴

30. Texas Gas's tariff contains forward-haul, zoned rates for south-to-north transportation service and rates for backhaul service. Under the tariff, backhaul rates from a particular zone southward are the forward haul rates from Zone SL to that particular zone of delivery. The tariff does not contain rates for north-to-south forward-haul transportation service, which the proposed Ohio-Louisiana Access Project will provide. Therefore, for purposes of determining whether Texas Gas's incremental rate is less than its existing system rate, the Commission will use Texas Gas's backhaul charge for service from Zone 4 to Zone SL (\$0.0794 per MMBtu) as the appropriate system charge for such comparison. The estimated firm incremental reservation charge of \$0.0433 per MMBtu is less than Texas Gas's currently effective Zone 4 to Zone SL firm reservation charge for north-to-south backhaul service.³⁵ Where, as here, an incremental rate calculated to recover only the costs of the expansion project would be lower than the existing system rates, the Commission has found that it is appropriate to establish the existing system rates as initial recourse rates for the project.³⁶ Accordingly, consistent with Commission policy, the Commission approves the use of Texas Gas' currently effective firm and interruptible system rates as the initial recourse rates for service utilizing the new capacity created by the expansion facilities.³⁷

³⁴ Texas Gas November 14, 2014 Answer at 3.

³⁵ The Commission notes that Texas Gas's calculated incremental rate is lower than all of Texas Gas' existing forward haul and backhaul rates.

³⁶ See *Millennium Pipeline Co., LLC*, 145 FERC ¶ 61,007, at P 30 (2013); *Southern Natural Gas Co.*, 124 FERC ¶ 61,058 (2008); and *Trunkline Gas Co., LLC*, 119 FERC ¶ 61,078, at P 24 (2007).

³⁷ We note that the project cost of service calculated by Texas Gas includes a return on equity of 14.5 percent. While the Commission has generally approved higher rates of return on equity for greenfield pipeline projects to reflect the higher risks associated with projects, when developing incremental rates for expansions of existing pipeline systems, like the project proposed here, the Commission's general policy is to use the rate of return components approved in the pipeline's last general NGA section 4 rate proceeding. Thus, the Commission considers Texas Gas's use of a 14.5 percent return on equity here to be inappropriate, because it has not demonstrated that there is a corresponding higher level of risk associated with the proposed Ohio-Louisiana Access Project. However, the Commission will not require Texas Gas to recalculate the incremental cost of service, as the end result will not affect the Commission's findings.

Rolled-In Rate Predetermination

31. Texas Gas requests a preliminary determination that it may roll the costs of the Ohio-Louisiana Access Project into its existing system rates in a future NGA general section 4 rate case. Texas Gas provides, in Exhibit N, a three-year statement of revenues, expenses, and income, as well as a three-year cost-of-service analysis for the project. Texas Gas states that its system rates will be reduced as a result of rolling the costs of the project into those rates and that doing so will not adversely affect any customer.

32. To receive authorization for rolled-in rate treatment, a pipeline must demonstrate that rolling the costs associated with the construction and operation of new facilities into system rates will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA general section 4 rate proceeding, the Commission compares the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).³⁸

33. All of the seven shippers executing precedent agreements with Texas Gas for service on the Ohio-Louisiana Access Project have agreed to pay negotiated rates for service using the project capacity. With the exception of the negotiated rates under two of the transportation agreements (one in which the negotiated rate is lower than the applicable recourse rate and the other in which the negotiated rate is exactly the same as the recourse rate), the negotiated rates under the transportation agreements are higher than the proposed maximum recourse rate corresponding to each individual transportation path. Thus, for those agreements, Commission policy dictates that project revenues are to be calculated using the lower, maximum recourse rates. However, Texas Gas calculated projected incremental revenues using the negotiated rate for all shipper agreements, contrary to Commission policy.³⁹ Therefore, the Commission staff has recalculated the

³⁸ See *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at P 25 (2014); *Tennessee Gas Pipeline Co. L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013); see also *Gulf Crossing Pipeline Co. LLC*, 144 FERC ¶ 61,196, at PP 15-16 (2013).

³⁹ See Texas Gas Application at Exhibit N, p. 8 and Texas Gas December 15, 2014 Data Response to Question 1(a), in which Texas Gas again utilized the negotiated rate for all shippers in recalculating incremental revenues in a revised page 8 of Exhibit N.

incremental revenues in Texas Gas's Exhibit N by applying the lower of the negotiated or maximum recourse rate, where appropriate, as required by Commission policy.⁴⁰

34. Thus, based on the actual contract volumes under the precedent agreements of 626,000 MMBtu per day and either the actual contract rates or the maximum recourse rate, as appropriate, the projected reservation charge revenue for the first year, as recalculated by Commission staff, is \$21,157,919, while the projected cost of service for the first year is \$11,966,194. In addition, the projected total reservation charge revenue for the first three years of service is \$69,994,481 (as also recalculated by Commission staff), and the total cost of service for the first three years is \$34,916,901. Therefore, the projected revenues from the project will significantly exceed the projected cost of service of the project for both the first year and the first three years of service.

35. As noted *supra*, Atmos filed a timely protest in this proceeding opposing only Texas Gas's request for a predetermination permitting Texas Gas to roll the costs of the project into system rates in its next NGA general section 4 rate case. Atmos contends that it is premature for Texas Gas to seek a predetermination for rolled-in rate treatment of the project costs because "the project is not fully subscribed, [and thus] it cannot be known at this time what would constitute appropriate system-wide rates."⁴¹ Atmos requests that the Commission deny Texas Gas's request for a predetermination in favor of rolled-in rates, without prejudice to Texas Gas demonstrating in its next NGA general section 4 rate case that rolled-in rates would not result in subsidization of the project by Texas Gas's other shippers. Atmos maintains that such a ruling is consistent with Commission precedent.⁴²

36. Atmos is incorrect that it is premature to make a determination on rolled-in rate treatment at this point because some of the capacity is not yet subscribed. It is Commission policy to make a predetermination as to the appropriate pricing for new facilities in the certificate proceeding in which their construction is authorized,⁴³ in order

⁴⁰ See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219 at PP 21-22.

⁴¹ Atmos October 30, 2014 Motion to Intervene and Protest at 3.

⁴² In support of its position, Atmos cites *Northern Natural Gas Co.*, 146 FERC ¶ 61,194, at P 18 (2014); *Gulf Crossing Pipeline Co., LLC*, 144 FERC ¶ 61,196 at P 16; *Gulf South Pipeline Co., LP and Petal Gas Storage, LLC*, 145 FERC ¶ 61,139, at P 41 (2013); and *AES Ocean Express LLC v. Florida Gas Transmission Co.*, 107 FERC ¶ 61, 276, at PP 39 & 43 (2004) (*AES Ocean Express*).

⁴³ See *Colorado Interstate Gas Co.*, 94 FERC ¶ 61,382, at 62,433 (2001).

to provide certainty regarding the potential economic impacts of a project before construction begins.⁴⁴ As explained above, a predetermination supporting rolled-in rates requires a demonstration that rolling project costs into system rates will not result in existing customers subsidizing an expansion project, which is made by showing that the revenues to be generated by the project will exceed the costs of the project. This showing, made during the certificate proceeding, requires sufficient knowledge of the costs of the project, the actual contract volumes subscribed at the time of the project application, and the proposed maximum recourse rate (or the actual negotiated rate if it is lower than the recourse rate), all of which are known at this time in this case.⁴⁵ It is not necessary to know, as Atmos believes, the system rates at the 100 percent subscription level, or at the time of the rate case, in order to grant a predetermination for rolled-in rate treatment, as it is precisely a pre-determination, made in advance of the subsequent rate case during which the project costs will be rolled into system rates. Texas Gas has already shown that the projected revenues calculated at the actual 83 percent subscription level exceed the estimated incremental cost of service associated with the project and therefore that, absent any significant change in material circumstances, existing shippers will benefit from rolling the costs of the project into system rates in its next NGA general section 4 rate case.

37. The projected revenues associated with the Ohio-Louisiana Access Project were derived consistent with Commission policy and are projected to significantly exceed the project's estimated costs. Therefore, the Commission grants Texas Gas's request for a predetermination that it may roll the costs of the proposed project into its system rates in its next NGA general section 4 rate proceeding, absent any significant change in material circumstances.

⁴⁴ Certificate Policy Statement, 88 FERC ¶ 61,227, at 61,750 (1999). The cases Atmos relies upon do not support Atmos' position that a request for a predetermination supporting for rolled-in rate treatment is premature and must be denied because the project is not fully subscribed. In each of these cases, except *AES Ocean Express*, noted below, the Commission denied the pipeline's request for a predetermination in favor of rolled in rate treatment because the revenues that would be generated by each project were less, not greater, than the cost of service of the project. *See* Texas Gas November 14, 2014 Answer at 5.

⁴⁵ In *AES Ocean Express*, cited by Atmos, the Commission denied the request for the rolled-in rate predetermination because the projected level of costs of the expansion project and timing of cost incurrence were speculative and indefinite and thus there was insufficient knowledge of the costs of the project.

Fuel

38. Texas Gas proposes to charge its currently effective fuel retention percentages on the capacity associated with the project facilities. Cities filed comments stating that the project may have an impact on fuel usage that could invalidate the current fuel collection procedures in Texas Gas's tariff. Therefore, Cities states that information regarding the potential impact of the project on fuel and fuel rates would be useful.

39. In its December 15, 2014 data response, Texas Gas provided a detailed fuel impact study, which Texas Gas states shows that system-wide fuel retention percentages will decrease as a result of the project.⁴⁶ As Texas Gas updates its fuel retention charges annually,⁴⁷ shippers will benefit from a reduction in fuel rates as a result of the project. Therefore, the Commission will grant Texas Gas's request to charge its existing applicable fuel percentages for the project capacity.

Negotiated Rate Agreements

40. As previously noted, Texas Gas indicates that all seven of the project shippers have agreed to service at negotiated rates. Texas Gas 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 Policy Statement⁴⁸ and the Commission's negotiated rate policies.⁴⁹ Texas Gas must file the negotiated rate

⁴⁶ Texas Gas December 15, 2014 Data Request Response to Question 2. Its response includes Tables A-1 through A-8, which detail the incorporation of the proposed maximum deliveries under the project at a load factor of 90 percent into the current fuel tracker methodology, and the theoretical fuel retention percentages resulting from those additional volumes.

⁴⁷ Texas Gas Transmission, LLC, FERC NGA Gas Tariff, Tariffs, Section 6.9, GT&C – Fuel, and Other Rates and Charges, 12.0.0.

⁴⁸ *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).

⁴⁹ *Natural Gas Pipeline 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).

agreement or tariff records at least 30 days, but not more than 60 days, before the effective date for such rates.⁵⁰

C. Environmental Analysis

41. On January 9, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment and Request for Comments on Environmental Issues for the Proposed Ohio-Louisiana Access Project* (NOI). The NOI was published in the *Federal Register*⁵¹ and mailed to interested parties, including federal, state, and local officials; agency representatives; conservation organizations; Native American tribes; local libraries and newspapers; and affected landowners in the vicinity of the project.⁵²

42. In response to the NOI, the Commission received consultation letters from the Indiana Department of Natural Resources, Division of Fish and Wildlife (Indiana DNR) and the Louisiana Department of Wildlife and Fisheries (Louisiana DWF). The Indiana DNR states that the Indiana Natural Heritage Data Center indicates that no endangered, threatened, or rare species or significant areas are documented within 0.5 mile of the Ohio-Louisiana Access Project area. Similarly, the Louisiana DWF states that no impacts on rare, threatened, or endangered species or critical habitat are anticipated as a result of the proposed project.

43. Also in response to the NOI, as noted *supra*, Allegheny, Ohio Valley, Heartwood, and Freshwater (collectively, Allegheny) jointly filed comments in this case and in the Southern Indiana Market Lateral proceeding in Docket No. CP15-14-000 raising the adequacy of the staff's environmental analysis under the National Environmental Policy Act of 1969 (NEPA).⁵³ Allegheny continues to maintain, as it has in previous proceedings, that the Commission must address the environmental consequences of natural gas extraction in the Marcellus and Utica shale formations and the associated expansion of infrastructure development at both a regional level, by way of a programmatic environmental impact statement (EIS), and at the site-specific level.

⁵⁰ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

⁵¹ 80 Fed. Reg. 2,409 (Jan. 16, 2015).

⁵² The NOI was mailed to property owners within 0.5 miles of the proposed Bosco Compressor Station.

⁵³ 42 U.S.C. § 4321, *et seq.* (2012).

Allegheny contends that the Commission must take a hard look at the indirect effects and cumulative impacts of the project, both of which it asserts include the impact on shale gas development in the Marcellus and Utica shale formations and the environmental effects of such development. Allegheny also contends that the Commission must include other connected, cumulative, and similar actions to the proposed project in the same environmental analysis, which it argues must be an EIS.

44. On March 13, 2015, Texas Gas filed a motion to answer and answer to the substantive comments of Allegheny. The Commission finds good cause to grant Texas Gas' motion and accept its answer, as it provides information that has assisted in our decisionmaking and establishes a more complete record.

45. To satisfy the requirements of NEPA, the Commission's staff prepared an Environmental Assessment (EA) for Texas Gas' proposed project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, fisheries, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. On April 29, 2015, the EA was placed into the public record for this proceeding. No comments on the EA were received.

1. Programmatic Environmental Impact Statement

46. The Council on Environmental Quality's (CEQ) regulations implementing NEPA state that major federal actions for which a programmatic EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive."⁵⁴ Recent CEQ guidance notes that a programmatic EIS may be a helpful tool when analyzing similar actions, including energy development programs proposed in the same region of the country.⁵⁵ However, preparing a programmatic EIS for similar actions is not required.⁵⁶

⁵⁴ 40 C.F.R. § 1508.18(b)(3) (2014).

⁵⁵ CEQ, *Effective Use of Programmatic NEPA Reviews* at 21 (Dec. 18, 2014) (2014 CEQ Programmatic Guidance).

⁵⁶ 40 C.F.R. § 1508.25(a)(3) (2014). *See also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 1,000-1,001 (9th Cir. 2004) (noting that with respect to analyzing "similar actions" in a single EIS, an agency should be accorded more deference in deciding whether to analyze such actions together)).

47. Allegheny argues the Commission must prepare a programmatic EIS assessing natural gas infrastructure projects related to natural gas development in the Marcellus and Utica shale formations.⁵⁷ It maintains, as it has in numerous other proceedings before the Commission, that a programmatic EIS is required because the Commission is engaged in long-term regional development and planning with the natural gas industry to increase natural gas infrastructure to facilitate the development of shale gas supplies, in order to bring those gas supplies to markets to meet the demand for electricity. As evidence of the Commission's program to "increase the nation's reliance on natural gas" using Appalachian shale gas, Allegheny refers to the Commission's participation in the development of the National Petroleum Council's 2007 Prudent Development report,⁵⁸ which it contends stresses the need to increase natural gas infrastructure, as well as the Commission's *FY2014-2018 Strategic Plan*, which identifies the approval of natural gas infrastructure as a specific "goal."⁵⁹ Allegheny also contends that the Commission's various proceedings to coordinate the natural gas and electricity markets⁶⁰ show that the "backbone" of the Commission's coordination efforts is "ensuring there is sufficient infrastructure in place to meet future demand for electricity."⁶¹

48. Citing extensively from the CEQ 2014 Programmatic Guidance, Allegheny asserts that the CEQ explicitly recommends a programmatic EIS when "several energy development programs proposed in the same region of the country [have] similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document."⁶² Allegheny maintains that there is an

⁵⁷ See Allegheny Comments at 31-40.

⁵⁸ The National Petroleum Council is a federal advisory committee that reports to the Secretary of Energy.

⁵⁹ Allegheny Comments at 35.

⁶⁰ Allegheny cites the Commission's *Coordination Between Natural Gas and Electricity Markets* proceeding in Docket No. AD12-12-000 and other proceedings examining the interdependencies between the gas and electric industries, such as *Coordination of the Scheduling Processes of natural Gas Pipelines and Public Utilities* in Docket No. RM14-2-000. *Id.* It also points to the Commission's quarterly reports providing updates on national and regional gas-electric coordination activities. *Id.* at 35-36.

⁶¹ *Id.* at 36.

⁶² 2014 CEQ Programmatic Guidance at 21.

enormous expansion of the natural gas pipeline system and much of it is due to gas drilling in the Marcellus and Utica shale formations. In support, Allegheny points to, among other things, an October 2014 Energy Information Administration (EIA) publication which it states indicates that there are at least 57 natural gas infrastructure projects that have either recently been put into service, are in the planning stage, or under environmental review in the northeast, midwest, and southeast, of which 56 are dedicated to transporting Marcellus and/or Utica shale gas.⁶³ Allegheny asserts that an agency cannot escape the existence of a comprehensive program with cumulative environmental effects by “disingenuously describing it as only an amalgamation of unrelated smaller projects.”⁶⁴

49. Further, Allegheny claims that a programmatic EIS may aid the Commission’s and the public’s understanding of the broadly foreseeable consequences of jurisdictional projects and non-jurisdictional shale gas production, “so that the public has a chance to see the big picture early.”⁶⁵ Allegheny notes that even if future pipeline projects may be theoretical and their environmental consequences uncertain, this does not mean that the Commission would not be able to “establish parameters for subsequent analysis.”⁶⁶

50. Additionally, Allegheny maintains that the benefits of preparing a programmatic EIS are reflected in the programmatic EIS prepared to evaluate the impacts of surface coal mining in Appalachia by the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers, the U.S. Office of Surface Mining of the Department of the Interior, the U.S. Fish and Wildlife Service, and the West Virginia Department of Environmental Protection.⁶⁷ Allegheny states that the Mountaintop Mining PEIS evaluated options for improving agency programs under the Clean Water Act, the Surface Mining Control and Reclamation Act, and the Endangered Species Act in order to

⁶³ *Id.* at 33-34. Allegheny also cites another EIA article entitled, “32% of Natural Gas Pipeline Capacity into the Northeast Could Be Bidirectional by 2017.”

⁶⁴ Allegheny Comments at 34 (citing *Churchill County v. Norton*, 276 F.3d 1060, 1076 (citing *Nat’l Wildlife Fed’n*, 677 F.2d at 890)). Allegheny also cites *City of Tenakee Springs v. Block*, 778 F.2d 1402 (9th Cir. 1985).

⁶⁵ Allegheny Comments at 32, citing CEQ 2014 Programmatic Guidance at 25.

⁶⁶ *Id.*, citing CEQ 2014 Programmatic Guidance at 11.

⁶⁷ Allegheny Comments at 38 (citing the “Mountaintop Mining/Valley Fills in Appalachia Final Programmatic Environmental Impact Statement” published in October 2005. (Mountaintop Mining PEIS)).

“reduc[e] the adverse environmental impacts of mountaintop mining operations and excess spoil valley fills ... in Appalachia,” and was “designed to inform more environmentally sound decision-making for the future permitting’ of mountaintop removal coal mining in Appalachia and included ‘a substantial amount of environmental and economic data’ that ‘provided ‘much valuable information [to] assist [the] respective agencies to better coordinate the review necessary under each agency’s mandates.’”⁶⁸ Allegheny notes that the Mountaintop Mining PEIS analyzed the scope of remaining surface-minable coal in the study area which included Kentucky, West Virginia, Tennessee, and Virginia. Allegheny argues this is precisely the type of analysis that the Commission is capable of performing in relation to the remaining extractable shale gas in the Marcellus and Utica shale formations and the infrastructure that will be required to transport the shale gas to market.

51. As the Commission has previously explained,⁶⁹ there is no Commission plan or policy to promote the unconventional production of, or to increase reliance on, natural gas. Rather, interstate natural gas infrastructure is proposed and developed by private industry, as reflected in the applications filed with the Commission by natural gas companies,⁷⁰ to respond to the demands of markets to whose fuel choices the Commission is intentionally neutral. Under NGA section 7(e), the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities “is or will be required by the present or future public convenience and necessity.”⁷¹ In reaching this determination, the Commission performs a flexible, balancing process in which it weighs the criteria enumerated in the Commission’s Certificate Policy Statement, as detailed above, as well as analyzes and balances the potential environmental impacts of the proposed project.

52. Moreover, documents cited by Allegheny, including the Commission’s Strategic Plan and the Commission’s proceeding regarding Coordination between Natural Gas and Electricity Markets, do not show that the Commission is engaged in regional planning that would provide a basis for requiring programmatic environmental review. Rather, the Strategic Plan sets forth goals for the efficient processing of individual pipeline applications in order to carry out the Commission’s responsibilities imposed under the

⁶⁸ *Id.*, quoting Mountaintop Mining PEIS at 1.

⁶⁹ See, e.g., *Texas Eastern Transmission, LP (Texas Eastern)*, 149 FERC ¶ 61,259, at PP 38-47 (2014); *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014).

⁷⁰ See *Texas Eastern*, 149 FERC ¶ 61,259 at PP 44-45.

⁷¹ 15 U.S.C. § 717f(e) (2012).

NGA. Similarly, the focus of the rulemaking proceeding regarding the coordination of the natural gas and electric industries is to better coordinate the scheduling of wholesale natural gas and electricity markets, as well as to provide additional scheduling flexibility to all shippers on interstate natural gas pipelines.⁷² As explained in the Notice of Proposed Rulemaking for natural gas and electric coordination,⁷³ rules to address the scheduling practices of the natural gas transportation and electricity markets do not involve any construction and qualify for a categorical exemption from environmental review under the Commission's NEPA regulations.⁷⁴

53. In addition, the mere fact that there are a number of approved, proposed, or planned infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not evidence the existence of a regional plan or policy of the Commission. Instead, this information confirms that the regional development of Marcellus and Utica Shale gas is initiated solely by a number of different companies in private industry. As the Supreme Court held in *Kleppe v. Sierra Club*, a programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.⁷⁵

54. Similarly, in *Piedmont Environmental Council v. FERC*⁷⁶ the U.S. Court of Appeals for the Fourth Circuit ruled that the Commission was not required to prepare a programmatic EIS for its promulgation of regulations to govern how we will issue permits for electric transmission facilities in areas designated as national interest corridors. The court explained that because permit applications would come later from private parties for sites within the corridors, the Commission could not “identify projects

⁷² See *Coordination of Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 80 Fed. Reg. 23,198 (Apr. 24, 2015), FERC Stats. & Regs., Regulations Preambles ¶ 31,368 (Apr. 16, 2015).

⁷³ *Notice of Proposed Rulemaking, Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 FERC ¶ 61,201 (2014). See, e.g., *Rockies Express Pipeline, LLC*, 150 FERC ¶ 61,161, at P 55 (2015).

⁷⁴ See 18 C.F.R. § 380.4(a)(27) (2015) (exempting “[s]ale, exchange, and transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act that require no construction of facilities” from environmental review).

⁷⁵ 427 U.S. 390, 401-02 (1976).

⁷⁶ 558 F.3d 304, 316-317 (4th Cir. 2009).

that are likely to be sited and permitted,” and thus did not have ‘information about the ultimate geographic footprint of the permitting program.’”⁷⁷ Under these circumstances, the court found that “a programmatic EIS would not present a credible forward look and would therefore not be a useful tool for basic program planning.”⁷⁸

55. Likewise, the Commission’s siting decisions regarding pending and future natural gas pipeline facilities will be based on proposals by private entities in a highly competitive industry, and the Commission has no basis to reliably predict the scale, timing, and location of projects, much less the type of facilities that will be proposed. Any broad, regional environmental analysis would “be little more than a study . . . containing estimates of potential development and attendant environmental consequences,”⁷⁹ and could not present “a credible forward look that would be a useful tool for basic program planning.”⁸⁰ In these circumstances, the Commission’s longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected, “should facilitate, not impede, adequate environmental assessment.”⁸¹

56. We do not believe that the Mountaintop Mining PEIS cited by Allegheny, supports its position that a programmatic EIS for natural gas infrastructure projects transporting shale gas must or should be prepared here. Surface coal mining is directly regulated by the agencies that prepared the PEIS under their existing programs implementing the Surface Mining Control and Reclamation Act, Clean Water Act, and Endangered Species Act. In addition, West Virginia issues the permits for the mountaintop mining and valley fill disposal activities. Here, the Commission neither has jurisdiction over shale natural gas drilling, nor a program or policy to facilitate the development of shale natural gas through certification of natural gas pipeline infrastructure projects. Given this jurisdictional distinction, a programmatic review of shale gas production would not provide useful information for the determinations to be made by the Commission under the Natural Gas Act.

⁷⁷ *Id.* at 316.

⁷⁸ *Id.*

⁷⁹ *Kleppe*, 427 U.S. at 402.

⁸⁰ *Piedmont Env’tl Council*, 558 F.3d at 316.

⁸¹ *Id.*

57. Finally, as among the various referenced certificate proceedings approving proposed pipeline projects to accommodate additional supply from the northeastern U.S., Allegheny has not shown any interrelationship or connectedness beyond the fact that the projects at issue might share a general regional proximity to the Marcellus and Utica Shale regions. Therefore, they do not represent either a “group of concerted actions” or “systematic and connected agency decisions” to implement a policy, plan or program.

58. For all of the above reasons, the Commission concludes that no program exists upon which the Commission must undertake a programmatic EIS.⁸²

2. Appropriate Scope of the Environmental Analysis for the Ohio-Louisiana Access Project

59. NEPA requires federal agencies to prepare “a detailed statement . . . on the environmental impact” of any proposed major federal action “significantly affecting the quality of the human environment.”⁸³ In making this determination, agencies must take “a hard look” at an action’s environmental consequences. CEQ regulations require agencies to consider three kinds of impacts flowing from a federal action: direct, indirect, and cumulative.⁸⁴ The direct impacts of an action are caused by the action and occur at the same time and place within the footprint of the proposed action.⁸⁵ Allegheny maintains, generally, that the Commission must take a hard look at the direct impact of the project on waterbodies and wetlands, wildlife habitat, air quality, and land use. As discussed briefly below, the EA analyzed the direct impacts of the projects on these resources.

60. Given that the proposed project involves minor facility modifications at four of Texas Gas’ existing compressor stations within the footprint of those facilities, the installation of bi-directional metering equipment at Texas Gas’ existing Bosco-Gulf South meter station, and the construction of a new compressor station on agricultural land adjacent to that existing meter station, requiring only 15 acres for its permanent operation, the EA determined that the project’s impacts would be minor, temporary, and

⁸² The EA correctly found that Allegheny’s request for a programmatic EIS is inappropriate. EA at 7.

⁸³ 42 U.S.C. § 4332(2)(c)(i) (2012).

⁸⁴ 40 C.F.R. § 1508.25 (2014).

⁸⁵ 40 C.F.R. § 1508.8(b) (2014).

highly localized.⁸⁶ The EA finds that majority of any impacts would be from the construction and operation of the Bosco Compressor Station in Quachita Parish, Louisiana. The EA states that the conversion of the 15 acres of prime farmland to an industrial use for the Bosco Compressor Station is insignificant given the large extent of prime farmland in the region. Below, we discuss Allegheny's arguments with respect to the indirect and cumulative impacts of the project.

a. Indirect Impact of Induced Shale Gas Production

61. Under the CEQ regulations, indirect impacts of proposed actions are "caused by the [proposed] action" and occur later in time or farther removed in distance than direct project impacts, but are still "reasonably foreseeable."⁸⁷ Indirect impacts may include "growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."⁸⁸ Thus, for an environmental impact to be an indirect effect of a proposed action, it must be both: (1) caused by the proposed action, and; (2) reasonably foreseeable.

62. Allegheny asks the Commission to assess as indirect effects of the Ohio-Louisiana Access Project, increased shale gas development in the Marcellus and Utica shale formations. Allegheny argues that such natural gas drilling in the Marcellus and Utica shale basins is causally related to the Ohio-Louisiana Access Project and reasonably foreseeable. Therefore, Allegheny asserts that the Commission must take a hard look at the environmental impacts of Marcellus and Utica shale extraction as indirect effects of the proposed project.

63. We disagree. The potential environmental effects associated with shale gas development are neither sufficiently causally related to the Ohio-Louisiana Access Project to warrant a detailed analysis, nor are they foreseeable, as contemplated by the CEQ regulations.⁸⁹

⁸⁶ EA at 6.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review denied, sub nom, Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. at 474-75 (upholding the Commission's analysis of the development of Marcellus shale

Causation

64. For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be sufficiently causally-related.⁹⁰ In, *Sylvester*, the court upheld the U.S. Army Corps of Engineers' (Corps of Engineers) decision to limit its NEPA review to impacts of the construction of a golf course in wetlands for which the Corps of Engineers issued a permit, rather than the impacts of the larger resort complex of which the golf course was a part. The court found that the secondary or indirect impacts of construction of the golf course did not include the construction of the other resort facilities. The court held that for an agency to be required under NEPA to consider related secondary effects as indirect effects of a federal action, the proposed agency action and the related secondary effects must be "two links of a single chain."⁹¹ The court found that the golf course and the rest of the resort complex were not two links of a single chain, but were separate segments of chain, since "each could exist without the other, although each would benefit from the other's presence."⁹² Thus, the court determined that the golf course and the entire resort

natural gas reserves where the Commission reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

⁹⁰ See *U.S. Dep't of Transp. v. Public Citizen*, 541 U.S. 752 (2004) (*Public Citizen*); *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1989) (*Sylvester*); and *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975) (*City of Davis*).

⁹¹ The *Sylvester* court created the following analogy to describe the scope of the effects of a proposed action:

Environmental impacts are in some respects like ripples following the casting of a stone in a pool. The simile is beguiling but useless as a standard. So employed it suggests that the entire pool must be considered each time a substance heavier than a hair lands upon its surface. This is not a practical guide. A better image is that of scattered bits of a broken chain, some segments of which contain numerous links, while others have only one or two. Each segment stands alone, but each link within each segment does not. 884 F.2d at 400.

⁹²Id. Similarly, in *Wetlands Action Network v. U.S. Army Corps of Engineers*, the court found that the Corps of Engineers had not violated NEPA by limiting the scope of its analysis to the impacts of the permit activities of dredging and filling 16 acres of federally delineated wetlands, rather than considering the impact associated with 600 acres of a mixed-use development project of which the wetlands were a part. 222 F.3d 1105 (9th Cir. 2000) (*Wetlands Action Network*).

complex were not “sufficiently interrelated” to require the more comprehensive impact analysis.⁹³

65. In *City of Davis*, the court found that effects of a proposed action must be included in the environmental review when the action is an “indispensable prerequisite” or an “essential catalyst” to those effects.⁹⁴ In that case, the court determined that a proposed freeway interchange, state-planned and federally-financed, was an indispensable prerequisite and essential catalyst to rapid future industrial development, thereby requiring an environmental analysis of the industrial development under NEPA as a secondary or indirect effect of the construction of the freeway interchange. Significantly, the court found that “the main purpose of the interchange, and its only credible economic justification, [was] to provide access to the Kidwell area for future industrial development.”⁹⁵

66. Allegheny argues that there is a “clear” causal connection between the Ohio-Louisiana Access Project and shale gas development in the Marcellus and Utica shale formations⁹⁶ and that such shale gas development and the proposed project are “obviously two links of a single chain,” since the proposed project will permit Texas Gas to transport shale natural gas supplies to interstate markets.⁹⁷ As support for the alleged “close causal relationship” between the proposed project and shale gas development, Allegheny cites the project application, in which Texas Gas documents the projected increases in Marcellus and Utica shale gas production, and the demand for transmission pipelines to transport the shale gas supplies to markets, and emphasizes throughout that the Ohio-Louisiana Access Project “is designed to meet the demand to transport natural gas produced in the Marcellus/Utica Shale Region to mid-western and southern markets on the Texas Gas system”⁹⁸ Allegheny also cites several government and industry sources as support for the causal connection. Specifically, Allegheny points to a 2011 report by the National Petroleum Council, which quoted the National Petroleum Council’s 2007 *Hard Truths* study describing natural gas transportation infrastructure as

⁹³ *Sylvester* at 398.

⁹⁴ 521 F.2d 661 at 674 (9th Cir. 1975).

⁹⁵ *Id.* at 677.

⁹⁶ Allegheny Comments at 6.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 4-5 (citing Application at 2, 4-5, and 14-17).

a “key link in the chain” between producers and consumers, and “crucial” for efficient delivery and functioning markets.⁹⁹ In addition, Allegheny notes that Texas Gas’s parent company Boardwalk Pipeline Partners (Boardwalk) explained in a recent presentation that natural gas from the Marcellus and Utica shale formations will be the gas supply for the Ohio-Louisiana Access Project, as well as for other pending Texas Gas infrastructure projects.¹⁰⁰

67. Further, Allegheny references the Commission’s own plans and presentations to demonstrate that the Commission itself considers natural gas infrastructure projects as causally connected to Marcellus and Utica shale production. Allegheny asserts that the Commission’s *Strategic Plan for FY 2014-2108* refers to the development of interstate natural gas infrastructure as “a critical link in ensuring that natural gas supplies can reach market areas.”¹⁰¹ Allegheny states that at a 2010 presentation in Berlin, Germany, the Commission used a map it had prepared identifying jurisdictional pipeline projects in Pennsylvania and surrounding areas, entitled, “Marcellus Shale Projects,” and at a 2011 presentation in Buffalo, New York discussed “new facilities to transport Marcellus shale gas.”¹⁰² Allegheny contends that use of the term “Marcellus Shale Projects” infers the alleged causal connection between the production and the project.¹⁰³ Similarly, Allegheny references other industry reports to show that existing pipelines are responding to the growth in natural gas production in the Marcellus and Utica shale formations by modifying their systems to permit bi-directional flow or constructing new facilities to transport the new shale gas production.

68. In addition, Allegheny argues that exploration and production activity is dependent upon sufficient midstream infrastructure, such as Texas Gas’s proposed

⁹⁹ *Id.* at 3 (citing National Petroleum Council, *Prudent Development: Realizing the Potential of North America’s Abundant Natural Gas and Oil Resources* at 51-52 (2011)).

¹⁰⁰ *Id.* at 5 (citing Boardwalk’s presentation at the 2014 Wells Fargo Energy Symposium (December 2014) at 17).

¹⁰¹ *Id.* at 6.

¹⁰² *Id.* at 6-8.

¹⁰³ *Id.* at 8.

project, because a producer's lack of acceptable transportation arrangements could shut in or curtail production and thereby adversely affect its operations or financial conditions.¹⁰⁴ Allegheny quotes another shale gas producer who indicates that one of the reasons to invest in Marcellus and Utica shale gas production is the existence of firm transportation contracts, which "de-risk production growth, ensure takeaway [capacity] and limit Appalachian basi[n] exposure."¹⁰⁵

69. NEPA requires a "reasonably close causal relationship" between the environmental effect and the alleged cause.¹⁰⁶ Thus, for increased natural gas production in the Marcellus and Utica shale formations, and the correlative potential environmental impacts of such production, to be evaluated as indirect impacts of the Ohio-Louisiana Access Project, the increased shale development must be an "effect" of the Commission's certification of the instant project or, in other words, the Commission's certification of this specific instant project must be the cause of the increased or additional shale development and its environmental effects. Allegheny has failed to establish the requisite causal connection between the project and shale development in the Marcellus and Utica shale plays, as articulated by the courts and the CEQ regulations, *i.e.*, that the Commission's action of approving particular pipeline infrastructure is causing or inducing the effect of additional or further shale gas production.

70. The Ohio-Louisiana Access Project involves relatively modest modifications to existing facilities and the construction of a new compressor station that will enable bi-directional flows on Texas Gas's existing pipeline. The proposed project is not creating the growth in the development of unconventional gas resources in the Marcellus and Utica regions. Rather, the proposed project is responding to a need for transportation of natural gas that was identified following the development of production and use of the resource. A number of factors – including natural gas prices, production costs, and transportation alternatives – drive new drilling.¹⁰⁷ Any such production would take place pursuant to the regulatory authority of state and local governments. Further, such

¹⁰⁴ Allegheny cites statements by Gulfport, one of the project shippers, about its Utica shale gas development. *Id.* at 13.

¹⁰⁵ *Id.* at 11 and Attachment 13, quoting statements of Rice Energy, prepared for the September 2, 2014 Barclays CEO Energy-Power Conference.

¹⁰⁶ *U.S. Dep't of Transp. v. Public Citizen*, 541 U.S. 752 (2004).

¹⁰⁷ *See Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly limited its consideration of indirect impacts when market demand, not a highway, would induce development).

development of shale resources will likely continue regardless of whether the proposed project is approved because multiple existing and proposed transportation alternatives for production from the region, including nonjurisdictional state pipelines, are available.¹⁰⁸

71. In support of its position, Allegheny relies heavily on the fact that: (1) Texas Gas views the intended purpose of the project to be to meet the demand to transport Marcellus and Utica shale gas supplies to new markets; (2) three shippers are producers who intend to use the project to transport their Marcellus and Utica shale gas supplies and indicate that their exploration and production activity depends upon sufficient midstream infrastructure; and (3) pipelines, in general, are universally recognized as necessary “links in the chain” connecting gas production to markets. While these facts may indicate that growth in Marcellus and Utica shale gas production is a factor spurring or “causing” the increase in new pipeline infrastructure projects, that does not mean that the proposed project will induce future development. A correlation does not imply causation.

72. It is axiomatic that there is a relationship between natural gas production and interstate natural gas pipelines as natural gas pipelines require and depend upon production activities to provide the gas supplies they transport to markets, but the fact that the *Sylvester* court used the phrase “links in a chain” to explain causation does not demonstrate that increased shale production will be caused by the instant project and therefore is an indirect impact of the project. Additional natural gas production and particular transportation infrastructure projects are not links of a single chain with respect to their causal relationship as analogized in *Sylvester*. Rather, like the golf course and the rest of the resort complex in *Sylvester* that were separate segments of a fractured chain, they are separate segments of the greater supply chain, since “each could exist without the other, although each would benefit from the other’s presence.”¹⁰⁹

73. While the information Allegheny submitted suggests that the existence of transportation infrastructure may decrease the risks associated with shale gas production or otherwise benefit such activities, Texas Gas’s proposed project is not “indispensable”

¹⁰⁸ See, e.g., *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed, sub nom., Coalition for Responsible Growth v. FERC*, 485 F. App’x. 472 (2d Cir. June 12, 2012) (unpublished opinion) (ruling that the Commission need not consider the environmental impacts of Marcellus Shale region production when authorizing projects that may (or may not) make use of such supplies).

¹⁰⁹ See *Sylvester*, 888 F.2d at 400.

or an “essential catalyst”¹¹⁰ for such production. Unlike the facts in *City of Davis*, where the entire purpose of the highway was to spur development – the additional development was the “raison d’etre” for the highway, without which the development would not have occurred – the core purpose of the Ohio-Louisiana Access Project is not to spur or facilitate additional shale gas production in any particular region. Rather, one of its purposes is to transport this gas production which is already occurring and will continue to occur for reasons unrelated to the project. Thus, the fact that producer-shippers will use this project to transport shale gas does not mean that production of these resources will not occur in the absence of the proposed project. Information submitted by Allegheny suggests that producer-shippers may have plans to utilize a number of pipelines, of which Texas Gas is just one, to transport their production.¹¹¹ Most importantly, Allegheny fails to identify any induced natural gas production associated with the Ohio-Louisiana Access Project.

74. Moreover, neither past nor future shale gas development in any particular region is an essential predicate for Texas Gas’s project. While, as stated, the project undoubtedly will be used to transport Marcellus and Utica shale gas, the additional transportation capacity created may be used to transport any conventional or unconventional supply regardless of where the gas is produced. The project can receive natural gas through its interconnects with several other natural gas pipelines, whose systems span multiple states with shale formations in the northeast, as well as states with conventional gas formations.¹¹² The proposed project will operate for decades and will be able to draw on multiple sources of gas over its lifetime. Ultimately, whether or how much gas from any specific source will travel through the project cannot be known.

75. Accordingly, the Commission finds there is an insufficient causal link between the proposed project and additional development in the region for such development to be considered an indirect impact under NEPA and CEQ’s regulations.

¹¹⁰ *City of Davis*, 521 F.2d at 674.

¹¹¹ See Allegheny Comments at 12. Gulfport indicates it has firm transportation capacity on ANR Pipeline Company and Tennessee Gas Pipeline Company that will deliver Utica shale supplies to midwest and Gulf Coast markets, respectively.

¹¹² For example, the proposed project will be able to transport gas in a southerly direction that is delivered to it from Texas Eastern Transmission System, Rockies Express Pipeline LLC, and Dominion Transmission Inc., which all interconnect with Texas Gas at Lebanon, Ohio.

Reasonable Foreseeability

76. Even if a causal relationship between the Commission's action and additional production were presumed, the scope of the impacts from any such induced production is not reasonably foreseeable, as contemplated by the CEQ regulations and case law. An impact is reasonably foreseeable if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."¹¹³ Courts have noted the starting point of any NEPA analysis is a "rule of reason," under which NEPA documents "need not address remote and highly speculative consequences."¹¹⁴ While courts have held that NEPA requires "reasonable forecasting," an agency is not required "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."¹¹⁵

77. Allegheny alleges that additional natural gas drilling in the Marcellus and Utica shale formations is reasonably foreseeable because three of the project's shippers are natural gas producers and each of them have an inventory of potential drilling locations in the Marcellus and/or Utica shale plays. Allegheny has submitted information regarding the purported current status of R.E. Gas Development's (a subsidiary of Rex Energy) well development in the Marcellus, Utica, and Upper Devonian shales.¹¹⁶ Allegheny also provides information on Gulfport's wells in the Utica shale formation,¹¹⁷ and notes

¹¹³ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

¹¹⁴ *Hammond v. Norton*, 370 F.Supp.2d 226, 245-46 (D.D.C. 2005).

¹¹⁵ *N. Plains Res. Council v. Surface Transp. Board.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

¹¹⁶ Allegheny Comments at 11 and Attachment 15 (Rex Energy's Prospectus Supplement, p. S-2 (Aug. 13, 2014)). Allegheny states as of the end of 2013, Rex Energy had interests in about 183,400 gross acres in the Appalachian Basin, and in the first six months of 2014, had drilled 24 wells, fracture stimulated 35 gross wells, and placed into service 23 gross wells, with another 11 wells drilled and awaiting completion as of June 30, 2014. Additionally, Allegheny states Rex Energy has identified 356 gross potential drilling locations in the Butler Marcellus Shale and 143 gross potential drilling locations in the combined Utica Warrior North and Warrior South prospects.

¹¹⁷ *Id.* at 12 and Attachment 17 (Securities and Exchange Commission, Form 10-K, Gulfport Energy Corporation, p. 2). Allegheny states that as of February 27, 2014, Gulfport owned leasehold interests in approximately 167,700 gross acres in the Utica Shale in Eastern Ohio. Allegheny states that according to Gulfport, as of December 31, 2013, it had spud 66 wells, 38 of which were completed and are producing,

(continued ...)

Jay-Bee is operating in a number of counties in West Virginia and plans to expand into other West Virginia counties.¹¹⁸

78. Allegheny also references a 2012 presentation by The Nature Conservancy in which it claims The Nature Conservancy: (1) estimated that 60,000 shale gas wells could eventually be drilled in the Pennsylvania; (2) projected how the wells would be distributed on the landscape under various well pad development scenarios; (3) analyzed where Marcellus shale drilling was likely to occur, how many miles of new pipelines would be constructed and the direct and indirect effects of those pipelines on forests by 2030.¹¹⁹

79. Allegheny fails to show that the explanatory information in the cited The Nature Conservancy report, or elsewhere, identifies information that would assist the Commission in determining the timing and location of wells and related infrastructure, much less the associated potential impacts of natural gas drilling, in the project area. Likewise, the identity of a producer of gas to be shipped on a pipeline, the general area where that producer's existing wells are located, and even the number and general area of potential drilling locations does not assist in identifying the exact location, scale, scope, and timing of future production-related facilities that will be developed as a result of approval of the instant project. In the absence of such information (location of the wells that will produce the gas which will be transported on the project facilities over their lifespans), the Commission in turn cannot forecast and analyze the specific impacts which might be associated with any additional production. No party has presented or referenced any accepted, detailed information that quantifies the environmental impacts on various resources of producing natural gas in the specific areas from which the proposed project might receive its supplies. Accordingly, we find that even if we were to find the required causal relation, which we do not, there is not sufficient information available regarding potential upstream impacts to develop an analysis which would assist

as of February 14, 2014, it had spud six gross wells all of which were still drilling, and in 2014, it intends to drill 85 to 95 gross wells on its Utica Shale acreage.

¹¹⁸ *Id.* at 14 and Attachment 18 (Jay-Bee Companies, Area of Operations), listing the names of the current and future operating counties in West Virginia.

¹¹⁹ *Id.* at 14-15 and Attachment 20 (The Nature Conservancy, Marcellus Gas Well & Pipeline Projections, pages 13-22). For example, Allegheny notes that the The Nature Conservancy report estimates that by 2030 there could be 10,000 to 25,000 miles of new gathering pipelines causing an estimated 60,000 to 150,000 acres of forest clearing and 300,000 to 900,000 acres of forest edge effects.

the Commission in either choosing between alternatives or developing mitigation measures for the proposed project.

80. Allegheny also cites *Northern Plains Resource Council et al. v. Surface Transportation Board et al.*¹²⁰ to support its contention that future production is reasonably foreseeable.¹²¹ *Northern Plains* addresses the issue of the extent to which the Surface Transportation Board should have considered the cumulative impacts of coal bed methane well development as part of its NEPA analysis of a proposed railroad line to transport coal from coal mines in three Montana counties. *Northern Plains* is distinguishable because the Bureau of Land Management (BLM) had prepared a programmatic EIS to estimate the reasonably foreseeable number of coal bed methane wells and field compressors, as well as the miles of roads and gathering lines that would be constructed over the next twenty years in the three counties that the railroad would cross.¹²² This provided the Surface Transportation Board with information about the timing, scope and location of future coal bed methane well development. Here, the Commission has no similar information about the timing, location, and scope of future shale (or conventional) gas well development in the project area. Moreover, as the Commission has previously found, *Northern Plains* establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, neither that court decision nor NEPA support the position that an agency should “engage in speculative analysis” or attempt “to do the impractical, if not enough information is available to permit meaningful consideration.”¹²³

b. Cumulative Impacts

81. A “cumulative impact” is defined by CEQ regulations as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”¹²⁴ A cumulative impacts

¹²⁰ 668 F.3d 1067 (9th Cir. 2011) (*Northern Plains*).

¹²¹ Allegheny Comments at 15 and 21.

¹²² For example, BLM’s and Montana’s programmatic EIS concluded that it was reasonably foreseeable that in the next 20 years at least 3,500 to 9,800 coal bed methane wells, 140 to 350 field compressors, and 2,050 to 5,850 miles of gathering lines would be built in the counties traversed by the railroad.

¹²³ See *Sabine Pass Liquefaction LLC*, 140 FERC ¶ 61,076, at P 17 (2012) (citing *Northern Plains*, 668 F.3d 1067 (9th Cir. 2011)).

¹²⁴ 40 C.F.R. § 1508.7 (2014).

analysis may require an analysis of actions unrelated to the proposed project if they occur in the project area of the project being analyzed.¹²⁵ However, “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”¹²⁶ An agency’s cumulative impacts analysis is only required to include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”¹²⁷ The requirement that an effect must be “reasonably foreseeable” to be considered under NEPA applies equally to indirect effects and cumulative effects.

82. The CEQ states that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.¹²⁸ Accordingly, “proposed actions of limited scope typically do not require as comprehensive an assessment of cumulative impacts as proposed actions that have significant environmental impacts over a large area.”¹²⁹ Rather, proposed actions that result in a finding of no significant impact usually involve only a limited cumulative impact analysis to confirm that the proposed action would not, in fact, have a significant impact on the environment.¹³⁰ Moreover, CEQ’s guidance on cumulative impacts assessments advises that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments.¹³¹

¹²⁵ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 12-16 (January 1997) (1997 *CEQ Guidance on Cumulative Effects*).

¹²⁶ *Id.* at 8.

¹²⁷ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d. Cir. 1975)).

¹²⁸ CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 3 (June 24, 2005) (2005 *CEQ Guidance on Past Effects*). See also *El Paso Natural Gas Co.*, 136 FERC ¶ 61,175, at P 15 (2011).

¹²⁹ 2005 *CEQ Guidance on Past Effects* at 3.

¹³⁰ *Id.*

¹³¹ The Supreme Court has similarly held that “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area

83. In considering cumulative impacts, the CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.¹³² The agency should then establish the geographic scope for the analysis.¹³³ Next, the agency should establish the time frame for the analysis equal to the timespan of the proposed project's direct and indirect impacts.¹³⁴ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.¹³⁵

84. Consistent with the CEQ guidance, to determine the scope of the cumulative impact analysis in an EA or EIS, Commission staff establishes a "region of influence" to define the area affected by the proposed action in which existing and reasonably foreseeable future actions may also result in cumulative impacts in that defined region of influence. In other words, the Commission analyzes other actions or projects in the vicinity of the proposed project with impacts that overlap the impact of the proposed project in the same space and time. The region of influence is established on a project-by-project basis and is specific to the resource affected and the magnitude of other projects being considered.

85. For purposes of considering the Ohio-Louisiana Access Project's incremental cumulative impact, the EA established a region of influence for all resources that would include areas within five miles of the proposed project's construction sites, since, as discussed *supra*, the EA determined that the project's impacts on resources would be minor, temporary, and highly localized, *i.e.*, not spreading beyond the five-mile radius.¹³⁶ The EA found that this small region of influence in which to analyze the additive impacts of other past, present, and reasonably foreseeable future projects to be appropriate. Since the proposed modifications at the existing compressor stations and meter station would occur within the fenced limits or permanent easements of those facilities and would not create new sources of emissions, the EA finds that the only impact that would result from

within which they may occur, is a task assigned to the special competency of the appropriate agencies." *Kleppe*, 427 U.S. 390 at 413.

¹³² 1997 CEQ Guidance on Cumulative Effects at 11.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ EA at 36.

these modifications would be temporary, localized construction emissions that would not pose a significant increase in regional pollutant levels.¹³⁷ Thus, the EA concludes that the cumulative impacts of these project facilities, when added to impacts from past, present and reasonably foreseeable projects within the region of influence, would be minor and temporary.¹³⁸

86. To assess the cumulative impacts that would result from the construction and operation of the proposed Bosco Compressor Station when added to impacts from current or planned projects within a five-mile radius of the new compressor station, the EA considered only projects with ongoing impacts or projects that have reasonably foreseeable past, present, or future impact. The EA states that according to the permit office of Ouachita Parish, Louisiana, there are no major projects proposed, under construction, or recently completed within a five-mile radius of the Bosco Compressor Station site, but there are 39 wells within the region of influence of the site, of which seven are active natural gas wells.¹³⁹ The EA indicates that no specific resource information is available for the wells and, therefore, staff could not quantify the impacts for further consideration. However, the EA relies on its analysis of the direct impacts of the Bosco Compressor Station on air quality and noise, which considered ambient air and sound level monitoring data that would have included the impact of the existing wells and found that that the project would not have a significant long-term adverse impact on air quality and noise.¹⁴⁰

87. With respect to the cumulative effects of the Bosco Compressor Station on air quality, the EA finds that based on its air modeling analysis, emissions from the Bosco Compressor Station would not cause or contribute to a violation of the National Ambient Air Quality Standards, and that air impacts, with the exception of greenhouse gas emissions (which would not have a discernible influence on regional climate change), would be localized and confined to the airshed in which the project occurs. The EA further finds that the combined effect of multiple construction projects occurring in the same airshed and time frame could temporarily add to the ongoing air quality effects of existing activities, but that no major projects have been identified in the vicinity of the

¹³⁷ *Id.* at 37 and 29.

¹³⁸ *Id.* at 37.

¹³⁹ *Id.* at 36-37. There are also natural gas meter station and interconnect facilities at the existing Gulf South-Bosco Meter Station adjacent to the proposed compressor station.

¹⁴⁰ *Id.* at 37-38 and 31-34.

proposed compressor station, and typically, smaller local projects have varying construction schedules and would take place over a relatively large geographic area. The EA concludes that the project would not have a significant long-term adverse impact on air quality and would not add significantly to the long-term cumulative impact of other projects.¹⁴¹ The EA does acknowledge that the Bosco Compressor Station could contribute to cumulative noise impacts, but that cumulative noise impacts are unlikely unless one or more of the local projects is constructed at the same time in the same location, since the impact of noise is highly localized and attenuates quickly as the distance from the noise source increases.¹⁴²

88. With respect to the cumulative impact of the compressor station on water resources, the EA notes that Texas Gas identified six, ephemeral drainages (four road and two agricultural irrigation ditches) that would be affected at the Bosco Compressor Station, but concludes that cumulative impacts on waterbodies, if they occur, would be expected to be minor and temporary.¹⁴³ Finally, the EA states that since the construction of the project is expected to have minor, short-term impacts on wildlife and no other projects are within the region of influence, any cumulative impacts on wildlife are anticipated to be minimal.¹⁴⁴

89. Since the EA finds that Bosco Compressor Station would have minor and temporary impacts on waterbodies, minor, short-term impacts on wildlife and vegetation, highly localized and/or temporary noise impacts, and localized air impacts confined to the airshed in which proposed compressor station is located, the EA concludes that the cumulative impacts of the proposed Bosco Compressor Station, when considered with past, present, and reasonably foreseeable projects within the region of influence, would be minor and temporary.¹⁴⁵

90. Allegheny argues that the Commission must include the environmental impacts of shale gas drilling in the Marcellus and Utica shale formations in an analysis of the cumulative impacts of the Ohio-Louisiana Access Project. Allegheny contends that the Commission's practice of using geographic proximity to a project and "regions of

¹⁴¹ *Id.* at 38.

¹⁴² *Id.*

¹⁴³ *Id.* at 37.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 37-38.

influence” as the standard for a cumulative impacts analysis is inconsistent with both the CEQ’s and the Commission’s NEPA regulations,¹⁴⁶ arbitrarily limits the scope of the cumulative impacts analysis to include only projects or actions within a narrow region of influence, and excludes the impacts of shale gas drilling, particularly the impacts on wildlife and its habitat.¹⁴⁷

91. As described throughout this order, the proposed Ohio-Louisiana Access Project involves various minor modifications to several existing compressor stations and an existing meter station, and the construction of one new compressor station, the impacts of which are virtually all limited, discrete, temporary, and highly localized. Moreover, all of the proposed project facilities, with the exception of the station reversal at Dillsboro Compressor Station in Indiana, are in Louisiana, hundreds of miles from shale gas development in the Marcellus and Utica shale formations.¹⁴⁸ The Commission finds that the EA appropriately limited its review to the impacts of other projects directly in the vicinity of each proposed modification for each resource analyzed, and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus

¹⁴⁶ Allegheny cites the *CEQ Guidance on Cumulative Effects* at 12 that states:

For a project-specific analysis, it is often sufficient to analyze effects within the immediate area of the proposed action. When analyzing the contribution of this proposed action to cumulative effects, however, the geographic boundaries of the analysis almost always should be expanded. These expanded boundaries can be thought of as differences in hierarchy or scale. Project-specific analyses are usually conducted on the scale of counties, forest management units, or installation boundaries, whereas cumulative effects analysis should be conducted on the scale of human communities, landscapes, watersheds, or airsheds.

¹⁴⁷ *Id.* at 16-19. Allegheny provides a listing of all of the Commission’s recent expansion proceedings in which the EA established limited the region of influence to 0.5 or 5 miles from the project facilities, or to projects “directly in the vicinity” or “in the general area” of the project. Allegheny also provides, in an effort to demonstrate “cumulative effects” of shale drilling on wildlife, the results of a 2014 research report published in *Environmental Science & Technology*, explaining all the various ways in which shale gas development disturbs animal habitat and harms wildlife. *Id.* 21-24, citing Brittingham, M.C., et al, Ecological Risks of Shale Oil and Gas Development to Wildlife, Aquatic Resources and the Habitats,” *Environmental Science & Technology*, pp. 11035-11037 (Sept. 4, 2014), provided in Attachment 22 to its comments.

¹⁴⁸ The Dillsboro Compressor Station, located in Dearborn County in southeastern Indiana, is also a remote distance from Marcellus and Utica shale drilling activities.

and Utica shale formations. Such impacts will occur far outside the five-mile region of influence of the Ohio-Louisiana Access Project. Further, given the large geographic scope of the Marcellus and Utica shale, the magnitude of the type of analysis requested by Allegheny – of the impacts of gas drilling in the Marcellus and Utica shale formations – bears no relationship to the limited magnitude of the Texas Gas’s instant proposal.

92. Allegheny’s argument that the Commission’s use of regions of influence and reliance on a project’s or action’s geographic proximity to the proposed action is inconsistent with the CEQ regulations is simply wrong, as the purpose of the cumulative impacts analysis is to consider the additive impact of a proposed action’s direct and indirect effects with other past, present, or reasonably foreseeable actions that have impacts occurring in the same region (and at the same time) *as those of the proposed action*. Thus, the Commission’s analysis of cumulative impacts is generally limited to the impact on the geographic area in which the project’s direct and indirect effects occur.

93. Allegheny’s reliance on *LaFlamme v. FERC*¹⁴⁹ is misplaced, as it in fact supports the Commission’s use of a region of influence and an analysis of cumulative impacts limited to those impacts occurring in the area of the project at issue. The court in *LaFlamme* did not fault the Commission for limiting its cumulative impacts analysis for the Sayles Flat Project to the cumulative effects of dams and facilities in the area of the project. Rather, the court found that the Commission had failed to consider at all the impact any other projects in the area of the Sayles Flat Project would have on resources *in that area*, as the EIS for the Upper Mountain Project on which it relied had only examined impacts in *its* area and not in the area of the Sayles Flat Project. Thus, the court was criticizing the Commission’s use of the “narrow analysis” of another project’s EIS – the Upper Mountain Project EIS – as a substitute for the analysis required for the Sayles project.¹⁵⁰ If anything, *LaFlamme* supports the importance of identifying a “region of influence” appropriately connected to the location of the project under review.

¹⁴⁹ 852 F.2d 389 ((9th Cir. 1988) (*LaFlamme*). In *LaFlamme*, the court found that in preparing an EA for the Sayles Flat Project, a hydroelectric project on the American River in California, the Commission had failed to consider the cumulative impacts of other projects on the American River because it had relied on a previous EIS for the Upper Mountain Project, another project on the river, which had limited its review to assessing the impact of that project’s (the Upper Mountain Project) diversion dams and other proposed facilities in that project’s (the Upper Mountain Project) area.

¹⁵⁰ 852 F.2d 389 at 401-02. The court stated: “At no point did the [Upper Mountain Project] EIS analyze the effects of *other projects*, pending or otherwise, might have on *this* section of the American River Basin,” i.e., the Sayles Flat Project section.

94. Allegheny also disagrees with the Commission's position that it is highly difficult and speculative to identify and quantify cumulative impacts of Marcellus shale gas production beyond the regions of influence considered in the Commission's EAs. As we have previously found, the full range of Marcellus shale development is both widespread and uncertain in nature and timing, making it highly difficult and speculative to identify and quantify cumulative impacts of possible future drilling relating to pipeline projects.¹⁵¹

95. Further, Allegheny seems to suggest that the Commission must consider the impacts of the Southern Indiana Market Lateral Project in its cumulative impacts analysis for the instant project because both projects impact the Ohio River Basin in Indiana, and the shipper for the Southern Indiana Market Lateral Project has subscribed to some of the available capacity on the Ohio-Louisiana Access Project.¹⁵² In addition, Allegheny argues that it is reasonably foreseeable other projects will be proposed along the Ohio River and, therefore, they should be included in a cumulative impact analysis for the instant project.

96. The lateral facilities proposed in Texas Gas's Southern Indiana Market Lateral Project extend from its existing Robards Junction lateral facilities in Henderson County in western Kentucky to the interconnection with SABIC near Mount Vernon in Posey County, Indiana, in the far southwestern corner of Indiana. While the Dillsboro Compressor Station to be modified in the instant case is also in Indiana, it is on the other side of the state, in southeastern Indiana. Thus, the potential impacts that might occur from the Southern Indiana Market Lateral Project are well outside the five-mile region of influence for the Indiana facilities of the Ohio-Louisiana Access Project, and clearly outside the five-mile region of influence for the rest of the project facilities in Louisiana. Similarly, the lateral facilities proposed by Texas Gas in the Western Kentucky Lateral

¹⁵¹ See *Central New York Oil & Gas Co. LLC*, 138 FERC ¶ 61,104, at P 7 (2012), upheld by *Coalition for Responsible Growth and Resource Conservation v. FERC*, 485 Fed. Appx. 472 (2d Cir. 2012).

¹⁵² Allegheny Comments at 20. As noted, *supra*, Texas Gas proposes in Docket No. CP15-14-001 to construct lateral facilities to serve industrial customer SABIC's existing plastics facility and its proposed cogeneration plant under development in Posey County, Indiana. Specifically, the facilities will consist of approximately 30.6 miles of a 10-inch-diameter pipeline lateral with a capacity of 53,500 MMBtu per day and metering and other appurtenant facilities to serve SABIC. SABIC will acquire both existing south-to-north firm transportation capacity on Texas Gas' mainline and a portion of the unsubscribed proposed north-to-south mainline capacity associated with the Ohio-Louisiana Access Project.

Project are located entirely within western Kentucky, far removed from the region of influence of either the Indiana or Louisiana proposed facilities in this case. Therefore, it is unnecessary to include the Southern Indiana Market Lateral and Western Kentucky Lateral Projects in the cumulative impact analysis for this case.

97. On June 5, 2015, Texas Gas filed an application in Docket No. CP15-513-000 to construct and operate its Northern Supply Access Project, in which it proposes to construct and modify additional aboveground facilities along its mainline to provide new, incremental capacity for north-to-south transportation service. Specifically, Texas Gas proposes to construct a new mainline compressor station at the north end of the mainline in Hamilton County, Ohio (the Harrison Compressor Station), install a new compressor at its existing Bastrop Compressor Station in Morehouse Parish, Louisiana, and modify seven of its existing compressor stations to enable bi-directional flow.¹⁵³ None of these modifications to reverse flow or add new compression will occur within the five-mile region of influence for the Ohio-Louisiana Access Project.¹⁵⁴

98. However, Texas Gas also proposes as part of its Northern Supply Access Project to install gas cooling facilities¹⁵⁵ at the existing Dillsboro Compressor Station in

¹⁵³ The proposed compressor modifications of the Northern Supply Access Project are spread all along Texas Gas's mainline, while the new Bosco Compressor station and compressor station reversals of the instant project are all congregated at the southern end of the system in Louisiana, with the exception of the modification to the Dillsboro Compressor Station in Indiana, discussed *infra*.

¹⁵⁴ Some of these Northern Supply Access Project proposed facility modifications will occur within 25 to 30 miles of the region of influence for the facilities proposed in this case, as the new Harrison Compressor Station in Ohio is about 30 miles from the Dillsboro Compressor Station in Indiana, and the additional compressor to be installed at the existing Bastrop Compressor Station is approximately 35 miles from the proposed new Bosco Compressor station in this case. Because prevailing winds blow in one direction at a time, air quality between the Harrison and Dillsboro Compressor Stations in Indiana, as well as between the Bastrop and Bosco Compressor Stations in Louisiana, would not be affected by both facilities in each instance. Based on the modeling analyses associated with the proposed Ohio-Louisiana Access Project, emissions from the compressor stations proposed in this case would be at *de minimus* levels before reaching the air space of the next compressor station. Therefore, the compressor stations would not result in cumulative impacts.

¹⁵⁵ These cooling facilities include: (1) two air-cooled heat exchangers; (2) various valves, fittings, and instrumentation; and (3) yard and station piping, which will lower the station main discharge temperature. Texas Gas states that the increasing

(continued ...)

Dearborn County, Indiana – the same compressor station it is proposing to modify as part of the Ohio-Louisiana Access Project. The Commission finds that because the installation and operation of the proposed cooling facilities at Dillsboro Compressor Station are minor modifications and will take place entirely within the station yard, the impacts are likely to be limited and temporary. Since the impacts from the Dillsboro station modifications proposed in this case will also be limited and temporary, and construction of such modifications will be offset by at least six months, the Commission finds that the cumulative impacts of the two projects within the five-mile region of influence will not be significant. Inclusion of this project in the cumulative impacts analysis does not alter any conclusions presented in the EA.

3. Scope of the Project: Segmentation

99. When assessing a proposed project’s scope under NEPA, an agency must examine both connected and cumulative actions, and may examine similar actions.¹⁵⁶ An agency impermissibly “segments” NEPA review when it divides these federal actions “into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”¹⁵⁷ Only by comprehensively considering “pending proposals can the agency evaluate different courses of action.”¹⁵⁸

100. Actions are “connected” if they: “[a]utomatically trigger other actions which may require environmental impact statements;” “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.”¹⁵⁹ Actions are not “connected” if they have “independent utility”¹⁶⁰ or if other actions have yet to be

flow of proposed quantities of natural gas from north to south on its system will require the Dillsboro station to manage larger volumes of gas at higher pressures.

¹⁵⁶ 40 C.F.R. § 1508.25(a) (2014).

¹⁵⁷ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

¹⁵⁸ *Id.* (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

¹⁵⁹ 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2014).

¹⁶⁰ See *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988); *Hudson River Sloop Clearwater, Inc. v. Dep’t of Navy*, 836 F.2d 760, 764 (2d Cir. 1988); *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987).

proposed.¹⁶¹ A proposal occurs when: (1) agency action subject to NEPA has a goal; (2) the agency is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and (3) the effects can be meaningfully evaluated.¹⁶² A proposal may exist in fact as well as by agency declaration that one exists.¹⁶³

101. Actions are “cumulative” if they, when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.¹⁶⁴ Similar to connected actions, cumulative actions must be proposed.¹⁶⁵

102. Actions are “similar” if they, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.¹⁶⁶ As noted above, unlike connected and cumulative actions, analyzing similar actions is not always mandatory.¹⁶⁷ An agency *may* wish to analyze these actions in the same impact statement, but it should do so when “the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”¹⁶⁸

103. As noted above, Allegheny contends that the Commission must include several other actions it alleges are connected, cumulative, and similar to the proposed project in

¹⁶¹ Connected actions must be “proposed.” *Delaware Riverkeeper Network*, 753 F.3d at 1317 (citing *Weinberger v. Catholic Action of Haw.*, 454 U.S. 139, 146 (1981)).

¹⁶² 40 C.F.R. § 1508.23 (2014).

¹⁶³ *Id.*

¹⁶⁴ 40 C.F.R. § 1508.25(a)(2).

¹⁶⁵ *Id.*

¹⁶⁶ 40 C.F.R. § 1508.25(a)(3).

¹⁶⁷ *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCB, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) for the proposition that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions’”).

¹⁶⁸ 40 C.F.R. § 1508.25(a)(3).

the same environmental analysis. Among those projects, Allegheny identifies “first and foremost” Texas Gas’s Southern Indiana Market Lateral Project, which Allegheny contends is clearly dependent upon implementation of the Ohio-Louisiana Access Project.¹⁶⁹ Allegheny claims that while Texas Gas asserts that the Ohio-Louisiana Access Project “is not dependent upon the Southern Indiana Market Lateral, and the project would go forward even if the Southern Indiana Market Lateral is not considered,”¹⁷⁰ it makes no corresponding claim in its application for the Southern Indiana Market Lateral Project. Allegheny argues that the Southern Indiana Market Lateral’s shipper’s reliance on excess mainline capacity associated with the Ohio-Louisiana Access Project renders the two projects sufficiently “closely related” to be deemed connected actions.

104. Additionally, Allegheny identifies several other projects which it asserts are connected actions that should be evaluated with the instant project. Allegheny points to two other Texas Gas projects for which Texas Gas at the time of its application in this case planned to file applications in early 2015, namely the pending Western Kentucky Market Lateral and Northern Supply Access Projects.¹⁷¹ Regarding the Western Kentucky Market Lateral Project, Allegheny asserts that notwithstanding Texas Gas’s assertion that the shipper on that project “will source its gas supplies solely from existing points on the Texas Gas system south of Kentucky and will not use any capacity associated the proposed Southern Indiana Market Lateral Project or the Ohio-Louisiana Access Project”¹⁷² gas supplies from the Marcellus and Utica shale plays might be made available to Western Kentucky Market Lateral customers, as that production increases.

105. Allegheny also contends that Texas Gas’s Northern Supply Access Project should be considered jointly with the Ohio-Louisiana Access Project by virtue of the facts that, as described by Texas Gas, it will upgrade Texas Gas’s mainline to facilitate additional station reversals and thus “have some overlap” with the instant project, it will be

¹⁶⁹ Allegheny Comments at 24-25.

¹⁷⁰ See Texas Gas Application at 24. .

¹⁷¹ As noted above, Texas Gas filed its application for the Western Kentucky Market Lateral Project in Docket No. CP15-105-000 on March 4, 2015 and its application for the Northern Supply Access Project in Docket No. CP15-513-000 on June 5, 2015.

¹⁷² Texas Gas’ Application in Docket No. CP15-14-000 at 19.

“incremental to” the Ohio-Louisiana Access Project, and its construction will be only be offset from the Ohio-Louisiana Access Project by less than one year.¹⁷³

106. Lastly, Allegheny argues that Rockies Express Pipeline LLC’s Zone 3 East-to-West Project in Docket No. CP14-498-000 (REX Pipeline Project)¹⁷⁴ should also be considered “as a connected, cumulative, and/or similar action.”¹⁷⁵ In support of this claim, Allegheny states that the REX Pipeline Project, like the Ohio-Louisiana Access Project, involves reversing the flow of a pipeline to transport Marcellus and Utica shale gas to markets. Allegheny suggests, moreover, that Texas Gas is dependent on the 1,200,000 Dth per day of gas that will flow to Lebanon, Ohio as a consequence of the REX Pipeline Project.¹⁷⁶

107. In evaluating whether actions are improperly segmented, courts typically employ an “independent utility” test, which “asks whether each project would have taken place in the other’s absence. If so, they have independent utility and are not considered connected actions.”¹⁷⁷

108. The EA states that the Southern Indiana Market Lateral Project and the present project are separate and distinct,¹⁷⁸ and we agree. These two projects have two different purposes, involve the construction of facilities in different geographic regions hundreds

¹⁷³ See Allegheny Comments at 26, quoting Texas Gas’s Application in Docket No. CP15-14-000 at 20. Ohio-Louisiana Access Project’s in-service date is June 1, 2016; Northern Supply Access Project’s in-service date is April 1, 2017.

¹⁷⁴ See *Rockies Express Pipeline, LLC*, 150 FERC ¶ 61,161 (2015).

¹⁷⁵ Allegheny Comments at 27.

¹⁷⁶ *Id.* Allegheny states that “if the flow of the REX Pipeline is not reversed, there would not be [that amount] of gas flowing from the Marcellus and Utica shale formations to Lebanon, Ohio. Thus, TGT’s Projects appear to depend, in large part, on construction of the REX Pipeline Project.”

¹⁷⁷ See, e.g., *Delaware Riverkeeper*, 753 F.3d at 1316-17 (assessing independent utility as one of four factors articulated in *Taxpayers Watchdog v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987)); *Webster v. U.S. Dep’t of Agric.* 685 F.3d 411, 426 (4th Cir. 2012); *Wilderness Workshop*, 531 F.3d 1220, 229 (10th Cir. 2008); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006).

¹⁷⁸ EA at 6.

of miles apart on different parts of Texas Gas's system, and neither project is operationally dependent on the other. The purpose of the Ohio-Louisiana Access Project is to install a compressor station and perform system modifications almost entirely in Louisiana¹⁷⁹ to allow portions of Texas Gas's system to operate bi-directionally in order to accommodate customers wishing to obtain north-to-south transportation service to serve new markets. Texas Gas's justification for this project does not rely on any other future projects. The purpose of the Southern Indiana Market Lateral project is to construct and operate a new 30.6-mile lateral pipeline in western Kentucky across the state line into southwestern Indiana to serve a specific, new industrial end-use customer, SABIC. SABIC is seeking transportation service on Texas Gas to serve its new co-generation facility under construction that will use natural gas instead of coal to create steam and power for SABIC's existing thermoplastics facility.

109. Furthermore, Texas Gas clarifies in Docket No. CP15-14-000 that if the Ohio-Louisiana Access Project were not approved by the Commission, the Southern Indiana Market Lateral customer who has contracted for a portion of the unsubscribed north-to-south mainline transportation capacity created by the instant project would need to locate other natural gas supplies on the Texas Gas system and would be able to contract for available existing south-to-north transportation capacity for delivery to the mainline interconnect with the Southern Indiana Market Lateral at Slaughters, Kentucky.¹⁸⁰ As noted above, the shipper for the Southern Indiana Market Lateral Project has also contracted for existing south-to-north capacity on the Texas Gas mainline to serve a portion of its supply needs. Consequently, the status of the Ohio-Louisiana Access Project will not impact Texas Gas's ability to provide transportation from the mainline at Slaughters, Kentucky to the proposed Southern Indiana Lateral,¹⁸¹ despite the lateral customer's current reliance on a small part of the proposed service under the instant project.

110. The Commission agrees that neither the Southern Indiana Market Lateral Project, to construct a lateral to serve one industrial end-use customer, nor the Ohio-Louisiana Access Project, proposing additional compression and system modifications to reverse mainline flow, are operationally dependent on the other of them. Under these circumstances, Texas Gas's assertion that the Ohio-Louisiana Access Project would go

¹⁷⁹ Only the modification to the Dillsboro Compressor Station is in southeastern Indiana.

¹⁸⁰ Texas Gas April 13, 2015 Data Response in Docket No. CP15-14-000 to Question 2.

¹⁸¹ *Id.*

forward even if the planned Southern Indiana Market Lateral was not constructed,¹⁸² and vice versa,¹⁸³ is supported. The Commission finds that each of these projects have substantial independent utility, and are not connected actions.¹⁸⁴

111. The other three projects identified by Allegheny also fail to meet the definition of connected actions. Each of these projects has substantial independent utility, and each, in its own way, is not dependent upon or otherwise connected to Texas Gas's proposed Ohio- Louisiana Access Project.

112. With respect to the Western Kentucky Market Lateral, like the Southern Indiana Market Lateral Project, this project is simply a lateral line expansion to serve one customer, TVA, who is not a shipper on any other of the expansions identified by Allegheny. Moreover, as it stands, TVA will source its gas supplies solely from existing points on the Texas Gas system south of Kentucky and will not use any capacity associated with the proposed Ohio-Louisiana Access Project; hence, it is not operationally dependent upon that project.

113. As explained, *supra*, the Northern Supply Access Project involves a proposal to increase the north-to-south capacity of Texas Gas's system through the construction of a new compressor station in Hamilton County, Ohio and certain modifications to seven existing compressor stations along Texas Gas's system, including and terminating at the Bastrop Compressor Station in Morehouse Parrish, Louisiana, where, in addition, Texas Gas proposes to install a new gas turbine compressor. However, other than the installation of certain auxiliary facilities within the station yard at Texas Gas's Dillsboro Station, these two projects involve the construction of facilities on different parts of Texas Gas's system, as explained *supra*. Furthermore, the increased capacity to be provided by the Northern Supply Access Project is in addition to the increased capacity that will be provided by the instant project, and is required to accommodate the demands of eight shippers, as reflected in separate and independent binding precedent agreements totaling 280,000 MMBtu per day. While three of these eight shippers are also shippers

¹⁸² See Texas Gas Application at 24.

¹⁸³ See Texas Gas March 2, 2015 Answer.

¹⁸⁴ Moreover, as discussed above, we have identified that the potential impacts that might occur from the Southern Indiana Market Lateral Project are well outside the 5-mile region of influence for the Indiana facilities of the Ohio-Louisiana Access Project, and clearly outside the 5-mile region of influence for the rest of the project facilities in Louisiana.

on the Ohio-Louisiana Access Project,¹⁸⁵ there is no indication in these circumstances that the Northern Supply Access Project and the Ohio-Louisiana Access Project are phases of one larger project. The Ohio-Louisiana Access Project does not depend on, and would proceed with or without, the Northern Supply Access Project, and vice-versa. Nothing suggests it would be “irrational or unwise” to complete the project without future projects.¹⁸⁶ The Commission considers the two projects to be functionally independent and separable from each other.

114. Additionally, we are not persuaded by Allegheny’s claim that Rockies Express’s REX Pipeline Project should be considered a connected or cumulative action because it similarly involves reversing the flow of a pipeline to transport Marcellus and Utica shale play gas to markets. Texas Gas’s Ohio-Louisiana Access Project is connected to multiple pipelines at the Lebanon Hub, which belies Allegheny’s claim that the Ohio-Louisiana Access Project is dependent on the REX Pipeline Project’s 1,200,000 Dth/d of gas that will flow to Lebanon, Ohio. Moreover, the Commission notes the REX Pipeline Project involves no new facilities or modifications to Rockies Express’s interconnection with Texas Gas at the Lebanon hub, nor do any of the REX Pipeline Project shippers have primary delivery points at the Lebanon hub. The REX Pipeline Project and the Ohio-Louisiana Access Project are separate, stand-alone projects involving different pipelines, each of which has substantial independent utility. While these two projects may similarly involve reversing the flow of a pipeline to transport Marcellus and Utica shale gas to markets (yet, in fact, primarily different markets), that similarity alone does not provide a basis for evaluating their environmental consequences together.

115. In sum, neither the Ohio-Louisiana Access Project, nor any of the other identified project’s utility is shown to be functionally or financially dependent on any other project. Nor are any of these projects shown, or claimed to be, dependent on the timing of another project’s approval or service date. Based on each project’s independent utility, none of the projects trigger any of the other projects and each project can proceed on its own. Thus, the four projects raised by Allegheny and discussed above are not connected actions that must be included in the environmental review of the proposed project.

116. Nor are these projects cumulative actions that should be included in the scope of the environmental analysis for the instant Ohio-Louisiana Access Project. As discussed, *supra*, we have determined that Texas Gas’s two proposed lateral projects will not

¹⁸⁵ Two of these three shippers have the same delivery point on both projects: JayBee has a shared delivery point on both projects at Mamou and RE Gas has a shared delivery point on both projects at Bosco.

¹⁸⁶ See *Trout Unlimited v. Morton*, 509 F.2d 1276, 1285 (1974).

cumulatively affect the same resources as the Ohio-Louisiana Access Project, and that the cumulative impacts from the instant project and the Northern Supply Access Project will not be significant. With respect to Allegheny's contention that the REX Pipeline Project and the instant project are cumulative actions, apart from their interconnection point at Lebanon, Ohio, the two pipelines extend in completely different directions, across different states – one extending directly west across Ohio, Indiana, Illinois, and Missouri, and the other extending southwest through Ohio, Kentucky, Tennessee, Mississippi, and Louisiana. Given that they are geographically remote, the REX Pipeline Project and the Ohio-Louisiana Access Project are unlikely to cause cumulatively significant impacts and, thus, the REX Pipeline Project is not a cumulative action requiring consideration in the same environmental document.

117. Finally, Allegheny argues that as a general proposition “similar actions that share similar timing” should be considered in the same environmental analysis, maintaining that the “three projects” have in-service dates between June 2015 and July 2016.¹⁸⁷ Allegheny claims a comprehensive consideration of the projects together might well reduce the number of pipeline miles or compressor stations or otherwise avoid unnecessary construction of facilities. However, Allegheny concedes that in the present case and the REX proceeding, involving flow reversals on existing pipelines, these concerns are minimized. We agree. Proposed projects to reverse flows typically involve limited pipeline construction, and combining consideration of proceedings to reverse flows on different pipelines would not result in a reduction of duplicative facilities. Texas Gas's proposed Northern Supply Access Project and the instant project are both proposals to reverse flow on the Texas Gas system, the timing of the projects are not similar, as the in-service date for the former project is in April 2017, and the projects, as noted above, serve several different shippers. While the instant project shares somewhat similar timing with the Southern Indiana Market Lateral and Western Kentucky Lateral Project, they do not share common geography or purpose, nor do they bear any other similarities. In any event, the fact that a similar action might share a common timing does not require that those actions be treated together in a single impact statement.

4. Need for an EIS

118. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.¹⁸⁸ However, if an agency determines that a federal action is not likely to have significant adverse effects, it may rely on an EA for

¹⁸⁷ Allegheny Comments at 27. The Commission is not clear to which three projects Allegheny refers.

¹⁸⁸ 42 U.S.C. § 4332(2)(C) and 40 C.F.R. § 1502.4 (2014).

compliance with NEPA.¹⁸⁹ In addition, the CEQ regulations implementing NEPA state that one of the purposes of an EA is to determine whether an EIS is required.¹⁹⁰ Thus, the Commission's environmental staff makes an upfront determination whether to prepare an EIS or an EA for each new proposed project, pursuant to the Commission's regulations.¹⁹¹

119. Though the CEQ regulations do not provide an explicit definition of the term "significant impact," they do provide that whether a project's impacts on the environment will be considered "significant" depends on both "context" and "intensity."¹⁹² Context means that the "significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality."¹⁹³ With regard to "intensity," the CEQ regulations set forth 10 factors agencies should consider, including: the unique characteristics of the geographic area, the degree to which the effects are highly controversial or highly uncertain or unknown, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect threatened and endangered species.¹⁹⁴

120. Allegheny argues that the "intensity" of the Ohio-Louisiana Access Project, as determined under an objective evaluation of the factors set forth in the CEQ regulations,

¹⁸⁹ 40 C.F.R. §§ 1501.3–1501.4. An EA is meant to be a "concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact." 40 C.F.R. § 1508.9(a). Pursuant to the Commission's regulations, if an EA is prepared first, "[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared." 18 C.F.R. § 380.6(b) (2015).

¹⁹⁰ 40 C.F.R. §1501.4(c) (2014).

¹⁹¹ The Commission's regulations implementing NEPA, though, require in the first instance preparation of an EIS for "[m]ajor construction projects under section 7 of the [NGA] using rights-of-way in which there is no existing natural gas pipeline." 18 C.F.R. § 380.6(a)(3) (2014).

¹⁹² 40 C.F.R. § 1508.27 (2014).

¹⁹³ 40 C.F.R. § 1508.24(a).

¹⁹⁴ 40 C.F.R. § 1508.24(b).

requires the Commission to prepare an EIS.¹⁹⁵ Allegheny asserts that authorization of the proposed project may establish a precedent for future actions with significant effects because once Texas Gas's pipeline is made bi-directional, it will undoubtedly lead to future actions. Allegheny also asserts that the instant project and the Southern Indiana Lateral Project are related and will have cumulatively significant impacts, particularly when the cumulative impacts of gas drilling in the Marcellus and Utica shale formations is considered. In addition, Allegheny argues that the effects on the environment are likely to be highly controversial, as evidenced by "unprecedented opposition"¹⁹⁶ from environmental activists and others.

121. Here, the Commission staff prepared an EA to determine whether the Ohio-Louisiana Access Project would have a significant impact, necessitating the preparation of an EIS. The Commission staff determined that an EA was appropriate because the proposed facilities are virtually all minor yard and station modifications of existing compressor stations and meter station along Texas Gas's mainline, within the footprint of those facilities, and will not impact any waterbodies, wetlands, or sensitive habitats. Only the proposed Bosco Compressor Station is a new facility and will have permanent land impacts, but it will be constructed on a 19-acre parcel of agricultural land adjacent to the already-disturbed land which contains the existing Gulf South-Bosco Meter Station, and will require only 15 acres for its permanent operation. Other than temporary construction impacts, the only environmental impacts expected to result from the project would be air and noise impacts from the operation of the Bosco Compressor Station, but neither would result in significant impacts. The project impacts are discussed in detail in the EA. The Commission finds that the EA for this project appropriately determined that the project will not result in significant impacts and satisfied our obligations under NEPA; therefore, the project does not warrant preparation of an EIS.

122. With respect to Allegheny's claim that the intensity of the project demands preparation of an EIS, the Commission finds that the Ohio-Louisiana Access Project and its impacts do not qualify as "highly controversial" for the purposes of determining significance. Allegheny's dispute is primarily, and directly, related to its desire for a comprehensive review of the impacts of Marcellus and Utica shale gas development. However, for the reasons discussed above, the Commission has found that the impacts resulting from additional production of shale natural gas are neither indirect nor reasonably foreseeable cumulative impacts of this project and therefore beyond the necessary scope of its inquiry. Allegheny may disagree with this determination, but this

¹⁹⁵ Allegheny Comments at 29.

¹⁹⁶ *Id.*, quoting remarks made by Commission Chairman Cheryl LaFleur at the National Press Club Luncheon on January 27, 2015 (*see* Attachment 23).

does not amount to a “controversy” requiring the preparation of an EIS. Rather, for an action to qualify as “highly controversial” for NEPA purposes, there must be a “dispute over the size, nature, or effect of the action, rather than the existence of opposition to it.”¹⁹⁷ A controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action,¹⁹⁸ nor does a controversy exist simply because there are conflicting views among experts.¹⁹⁹ Further, the Commission’s approval of the proposed project is not establishing a precedent for future actions, as we base our determinations on the specific facts of each individual application before us.

123. Thus, the intensity of the project does not support a finding of significance. Instead, the relevant issues regarding the direct and indirect environmental impacts of the project that needed to be considered were relatively small in number and well-defined, since no substantial issue relating to the impacts of air emissions from the Bosco Compressor Station exists. The EA concludes, and we agree, that the project would not have a significant impact on the quality of the human environment. Accordingly, preparation of an EIS is not required.

124. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Texas Gas’s application and supplements, and in compliance with the environmental conditions in the appendix to this Order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

125. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. 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.²⁰⁰

¹⁹⁷ See *Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074 at P 23 (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992)).

¹⁹⁸ *Id.*

¹⁹⁹ *Fund for Animals v. Williams*, 246 F.Supp.2d 27, 45 (D.D.C. 2003).

²⁰⁰ 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).

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Gas authorizing it to construct and operate the Ohio-Louisiana Access Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned on Texas Gas:

(1) complying with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and 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 pursuant to section 157.20(b) of the Commission's regulations; and

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

(C) Texas Gas's proposal to use its currently effective system rates as initial rates for service using the Ohio-Louisiana Access Project facilities is approved.

(D) Texas Gas's request for a predetermination supporting rolled-in rate treatment for the costs of the Ohio-Louisiana Access Project in its next NGA general section 4 rate proceeding is granted, barring a significant change in circumstances, as discussed in the body of this order.

(E) Texas Gas must execute firm transportation service agreements equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to commencing construction.

(F) Texas Gas must file its negotiated rate agreements or tariff records describing the essential elements of the agreements at least 30 days, but not more than 60 days, prior to the date the project facilities go into service.

(G) Texas Gas shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Texas Gas. Texas Gas

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

(H) The late motions to intervene filed by Allegheny Defense Project, Ohio Valley, Heartwood, and Freshwater are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Interventions

Allegheny Defense Project
Atmos Energy Corporation
Atmos Energy Marketing LLC
Exelon Corporation
Freshwater Accountability Project
Heartwood
Indiana Gas Company, Inc.
Louisville Gas and Electric Company
NJR Energy Services Company
Ohio Valley Environmental Coalition
Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas and Northern Illinois Gas
Company d/b/a Nicor Gas Company
Public Service Company of North Carolina
Tennessee Valley Authority
Western Tennessee Municipal Group,²⁰¹ Jackson Energy Authority,
City of Jackson, Tennessee, and the Kentucky Cities²⁰²

²⁰¹ The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee.

²⁰² The Kentucky Cities are the Cities of Carrollton and Henderson, Kentucky.

Appendix B

Environmental Conditions

1. Texas Gas shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Texas Gas 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 the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Texas Gas 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 design sheets. **As soon as they are available, and before the start of construction**, Texas Gas shall file with the Secretary any revised detailed survey maps/sheets at a scale not smaller than 1:6,000 with station positions for the facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Texas Gas's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Texas Gas'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 facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Texas Gas shall file with the Secretary detailed 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, and 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 the OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by the Commission's "Upland Erosion Control, Revegetation, and Maintenance Plan" and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

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

- a. how Texas Gas would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Texas Gas would 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 would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instruction Texas Gas would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Texas Gas's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Gas would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Texas Gas shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Texas Gas'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 the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Texas Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Gas's response.
8. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities**, Texas Gas shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Texas Gas must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
 10. **Within 30 days of placing the authorized facilities in service**, Texas Gas 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 would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Texas Gas has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 11. Texas Gas shall file a noise survey with the Secretary **no later than 60 days** after placing the Bosco Compressor Station in service. If a full power load condition noise survey is not possible, Texas Gas shall provide an interim survey at maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the equipment at the Bosco Compressor Station under interim or full horsepower load conditions exceeds an day-night sound level of 55 decibel (A-weighted scale) at any nearby noise sensitive areas, Texas Gas shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Texas Gas 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**.