

154 FERC ¶ 61,139  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. CP15-137-000

ORDER ISSUING CERTIFICATE

(Issued February 25, 2016)

1. On March 31, 2015, Rockies Express Pipeline LLC (Rockies Express) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157, Subpart A, of the Commission's regulations<sup>2</sup> for a certificate of public convenience and necessity authorizing construction and operation of natural gas compression and ancillary facilities in Fayette, Pickaway, Muskingum, and Warren Counties, Ohio and Decatur County, Indiana, to provide an additional 800,000 dekatherms per day (Dth/d) of east-to-west transportation service within Zone 3 of the Rockies Express system (East-to-West Expansion Project). As discussed below, we will grant the requested authorizations subject to the conditions discussed herein.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2015).

## **I. Background and Proposal**

2. Rockies Express is a jointly owned Delaware limited liability company<sup>3</sup> and a natural gas company as defined by NGA section 2(6).<sup>4</sup> Rockies Express's mainline system includes 1,698 miles of 36- and 42-inch-diameter pipeline that extends from northwestern Colorado and southern Wyoming to the Clarington Hub near Clarington, Monroe County, Ohio.<sup>5</sup> The mainline was constructed and placed into operation in three phases, resulting in three rate zones designated as Zone 1, Zone 2, and Zone 3.<sup>6</sup> Zone 3, the easternmost rate zone, extends from Audrain County, Missouri, eastward to the Clarington Hub near Clarington, Ohio, and encompasses approximately 642 miles of mainline facilities, including five compressor stations.

3. The mainline was originally designed to provide transportation of natural gas from west to east. However, in February 2015, the Commission granted Rockies Express's application for certificate authority to make modifications at its existing compressor stations and interconnections to enable Rockies Express to provide 1,200,000 Dth/d of firm east-to-west transportation service within Zone 3 on the mainline.<sup>7</sup> In the instant

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<sup>3</sup> Rockies Express is jointly owned by three members: 50 percent by an indirect, wholly-owned subsidiary of Tallgrass Development, LP; 25 percent by an indirect, wholly-owned subsidiary of Sempra Energy; and 25 percent by an indirect, wholly-owned subsidiary of Phillips 66. The indirect wholly-owned subsidiary of Tallgrass Development, LP, Tallgrass NatGas Operator, LLC, is the operator of Rockies Express's system.

<sup>4</sup> 15 U.S.C. § 717a(6) (2012).

<sup>5</sup> The pipeline provides natural gas transportation services within Colorado, Wyoming, Nebraska, Kansas, Missouri, Illinois, Indiana and Ohio.

<sup>6</sup> See *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, *order on reh'g*, 113 FERC ¶ 61,327 (2005); *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007); *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008).

<sup>7</sup> *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 (2015). Rockies Express's Zone 3 facilities also include the Seneca Lateral, a 14.7-mile-long, 24-inch-diameter lateral with a booster compressor station that begins at the MarkWest Seneca Gas Processing Plant in Noble County, Ohio, and delivers gas to the mainline in Monroe County, Ohio. The Seneca Lateral has capacity to accommodate 600,000 Dth/d of firm transportation service and was constructed under section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. § 3371(a) (2012), for service under the Commission's Part 284, subpart B regulations implementing NGPA section 311, 18 C.F.R. §§ 284.101 –

(continued...)

proceeding, Rockies Express proposes to construct three new compressor stations and to add compression and other ancillary facilities at two existing compressor stations. Upon completion, the East-to-West Expansion Project will increase Zone 3's east-to-west firm transportation capability on the mainline facilities by 800,000 Dth/d for receipts at the Clarington Hub to corresponding deliveries of 520,000 Dth/d and 280,000 Dth/d at Lebanon, Ohio, and Moultrie County, Illinois, respectively.

4. Specifically, Rockies Express requests authority to construct and operate the following facilities:

- one new 49,428 horsepower compressor station in Pickaway County, Ohio, including gas cooling facilities and a power and control building (Columbus Compressor Station);
- one new 31,791 horsepower compressor station in Fayette County, Ohio, including gas cooling facilities and a power and control building (Washington Court House Compressor Station);
- one new 37,038 horsepower compressor station in Decatur County, Indiana, including gas cooling facilities and a power and control building (St. Paul Compressor Station);
- an additional 38,400 horsepower of compression, gas cooling facilities, and a new power distribution building at the existing Chandlersville Compressor Station in Muskingum County, Ohio (Chandlersville Compressor Station); and
- gas cooling facilities and a new power distribution building at the existing Hamilton Compressor Station in Warren County, Ohio (Hamilton Compressor Station).

5. Rockies Express held a non-binding open season from May 30, 2014, to June 27, 2014, and a binding open season from March 2, 2015, to March 13, 2015. The open seasons resulted in precedent agreements with six shippers for a total firm transportation commitment of 700,000 Dth/d. The shippers have signed precedent agreements under Rockies Express's existing Rate Schedule FTS at negotiated rates for 15-year terms. The

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284.102 (2015). On March 2, 2015, Rockies Express filed an application in Docket No. CP15-102-000 for authorization to operate the Seneca Lateral facilities as certificated facilities under section 7 of the NGA for service under the Part 284, subpart G blanket certificate regulations, 18 C.F.R. §§ 284.221 – 284.227 (2015).

shippers are: American Energy – Utica, LLC (150,000 Dth/d), EdgeMarc Energy Holdings, LLC (50,000 Dth/d), EQT Energy, LLC (200,000 Dth/d), Gulfport Energy Corporation (50,000 Dth/d), Jay-Bee Oil & Gas, Inc. (150,000 Dth/d), and Triad Hunter, LLC (100,000 Dth/d).

6. The project's estimated cost is \$532,072,560. Rockies Express proposes to use its existing Zone 3 Rate Schedule FTS system reservation and commodity charges as the recourse rates for firm services using the proposed expansion capacity. Rockies Express proposes incremental rates for fuel and electric costs that will apply only to shippers utilizing the expansion capacity.

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

7. Notice of Rockies Express's application was published in the *Federal Register* on April 17, 2015, establishing a May 4, 2015 deadline for motions to intervene, comments, and protests.<sup>8</sup> The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.<sup>9</sup>

8. On May 5, 2015, Concord Energy LLC, an existing shipper on Rockies Express's system, filed an unopposed motion to intervene out-of-time. On May 29, 2015, Allegheny Defense Project (Allegheny), Heartwood Alliance (Heartwood), Ohio Valley Environmental Coalition (Ohio Valley), and the Freshwater Accountability Project (Freshwater) each filed individual motions to intervene out-of-time and comments raising environmental concerns. On June 12, 2015, Rockies Express filed an answer opposing the four conservation groups' motions on the grounds that they have sought late intervention in this proceeding and others without providing explanations that demonstrate good cause for the Commission to grant them late intervention.<sup>10</sup>

9. Rockies Express is correct that the Commission's regulations require a party seeking late intervention to establish good cause to justify the Commission's waiver of the time limitation for motions to intervene and comments,<sup>11</sup> and neither Concord Energy LLC nor any of the conservation groups offered any explanation for why they were late

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<sup>8</sup> 80 Fed. Reg. 21,230.

<sup>9</sup> 18 C.F.R. § 385.214(c) (2015).

<sup>10</sup> Rockies Express June 12, 2015 Answer.

<sup>11</sup> 18 C.F.R. § 385.214(b)(3) (2015).

in filing their motions to intervene.<sup>12</sup> However, in the interests of giving full consideration to the issues raised during proceedings for authorization of natural gas projects, the Commission has a liberal intervention policy prior to the time an order on the merits has been issued.<sup>13</sup> Allegheny, Heartwood, Ohio Valley, and Freshwater have expressed environmental concerns that demonstrate their interests in this proceeding. Accordingly, we will grant the late motions to intervene consistent with the Commission's practice of allowing late interventions prior to the issuance of orders on the merits in certificate proceeding when doing so will not cause undue delay or unfairly prejudice the applicant or existing parties to this proceeding.<sup>14</sup> Allegheny's, Heartwood's, Ohio Valley's, and Freshwater's jointly filed comments and other comments on environmental issues were addressed in the Environmental Assessment (EA) prepared for Rockies Express's proposed project. Comments received following issuance of the EA are addressed below in the environmental analysis section of this order.

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<sup>12</sup> Rather than providing explanations for failing to file their motions to intervene by the May 4, 2015 due date established by the Commission's notice of Rockies Express's application, Allegheny, Heartwood, Ohio Valley, and Freshwater simply assert that filing their motions to intervene by the May 29, 2015 due date for environmental comments is sufficient to establish good cause for us to grant them late intervention. We once again emphasize that Rule 210 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.210(b) (2015)) provides that only those motions to intervene filed *within the time period prescribed by the Commission's notice of the proceeding* are deemed timely. Further, while section 380.10(a)(1) of the regulations provides an exception that allows another opportunity for timely intervention during the comment period on a draft Environmental Impact Statement (EIS), that exception is not applicable in this proceeding in which the Commission has prepared an Environmental Assessment, not an EIS. *See, e.g., Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137, at P 22 (2013).

<sup>13</sup> *Cameron LNG, LLC*, 118 FERC ¶ 61,019, at P 21 (2007) (citing *Gulfstream Natural Gas System, L.L.C.*, 95 FERC ¶ 61,100 (2001) and *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,358 (1992)).

<sup>14</sup> 18 C.F.R. § 385.214(d) (2015). *Enable Gas Transmission, LLC*, 151 FERC ¶ 61,031, at P 9 (2015), and *Tennessee Gas Pipeline Company, L.L.C.*, 142 FERC ¶ 61,025, at P 15 (2013).

### **III. Discussion**

10. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>15</sup>

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

11. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>16</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline 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.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

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<sup>15</sup> 15 U.S.C. §§ 717f(c), (e) (2012).

<sup>16</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

13. 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 existing customers. As discussed below, the revenues from Rockies Express's negotiated reservation rates with the expansion shippers are expected to exceed the project's associated cost of service. Further, Rockies Express will establish separately-stated fuel and electric rates that will apply exclusively to shippers receiving firm service using the proposed expansion capacity in order to ensure existing customers will not subsidize the cost of fuel or power associated with the proposed project. Accordingly, the proposal satisfies the Certificate Policy Statement's threshold no-subsidy requirement.

14. We also find that the proposal will not have any other adverse impacts on Rockies Express's services for its existing shippers. Rockies Express has provided information demonstrating that the project will not adversely affect its ability to satisfy its existing obligations to provide eastbound and westbound firm transportation services for its existing shippers.<sup>17</sup>

15. Rockies Express proposes to provide a new service that is not intended to replace firm transportation service on any other existing pipeline. No pipeline company or customer of any other pipeline company has protested the application. Thus, there will be no adverse impact on other existing pipelines or their captive customers.

16. Based on information contained in its certificate application, as supplemented, Rockies Express still needed to acquire approximately 145 acres of land for the proposed project.<sup>18</sup> However, Rockies Express does not anticipate that it will need to rely on its

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<sup>17</sup> Based on a review of the data submitted by Rockies Express in the hydraulic models and the Exhibits G in its application, Commission staff concluded that the expansion facilities are appropriately designed to enable Rockies Express to provide an additional 800,000 Dth per day of firm east-to-west transportation service from the Appalachian Basin to Midwestern gas interconnects and markets, while continuing to meet all of its existing firm service obligations for both eastbound and westbound firm transportation.

<sup>18</sup> See Rockies Express March 31, 2015 Application Vol. 1 at 15 (stating that Rockies Express will acquire approximately 24.008 acres at the new Columbus Compressor Station, 40.779 acres at the new Washington Court House Compressor Station, and 80 acres at the new St. Paul Compressor Station). See also Rockies Express August 24, 2015 Filing at 2 (notifying the Commission that a new power line is needed at the existing Chandlersville Compressor Station and indicating that, of the 0.41 acre of new disturbance required, 0.07 acre will be outside of the fenced site).

certificate authority to seek eminent domain, instead stating that it will acquire the necessary property rights for the project through negotiations with landowners.<sup>19</sup> In view of these considerations, we find that Rockies Express has satisfied the Certificate Policy Statement's criterion which evaluates the extent to which an applicant has sought to minimize economic impacts on landowners and surrounding communities.

17. Rockies Express's proposal will enable it to provide an additional 800,000 Dth/d of firm east-to-west transportation service, 87.5 percent of which is subscribed under 15-year firm service agreements.<sup>20</sup> Based on the benefits the project will provide and the minimal adverse impacts to Rockies Express's existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds that Rockies Express's proposal is consistent with the Certificate Policy statement and that the public convenience and necessity require approval of proposed project under section 7 of the NGA, subject to the environmental and other conditions discussed below.

### **B. Rates and Tariff**

18. Rockies Express proposes to utilize its existing Rate Schedule FTS rates, except for fuel and electric power charges, as the initial recourse rates for firm service using the expansion capacity.

19. To ensure expansion projects will not be subsidized by existing customers, Commission policy generally requires that incremental rates be established for services utilizing expansion capacity unless such incremental rates would be lower than the generally applicable rates, in which case the generally applicable rates are approved as the initial recourse rates for the expansion service.<sup>21</sup> Rockies Express's estimated first year cost of service (not including gas fuel and electric costs) for the full 800,000 Dth per day of expansion service is \$106,404,713, consisting of \$105,959,727 of fixed costs and

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<sup>19</sup> *Id.*

<sup>20</sup> Consistent with Commission policy, Rockies Express's certificate will be conditioned to provide that construction may not commence until Rockies Express has executed contracts for at least the 700,000 Dth per day of firm service represented by its precedents agreements. *See, e.g., Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at Ordering Paragraph (E) (2015).

<sup>21</sup> *See, e.g., Texas Eastern Transmission, LP*, 146 FERC ¶ 61,086, at P 60 (2014), and *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281, at P 33 (2007).

\$444,986 of variable costs.<sup>22</sup> Using the straight fixed variable method of rate calculation with a 100 percent load factor of 292,000,000 Dth, reflecting the expansion project's total annual firm design capacity (800,000 Dth per day times 365 days), would result in an incremental reservation rate of \$0.3629 per Dth/day and an incremental commodity rate of \$0.0015 per Dth,<sup>23</sup> which are lower than Rockies Express's currently effective Zone 3 Rate Schedule FTS base reservation charge of \$0.8767 per Dth/day and commodity charge of \$0.0025 per Dth. Accordingly, the Commission will approve Rockies Express's request to use its existing system reservation charge and commodity charge as the initial recourse rates for services utilizing the new capacity. Rockies Express's application does not specifically address the rate for interruptible service once the project's new compression facilities have been placed in service to increase its mainline facilities' capacity. Since it is not possible to determine if an interruptible shipper is using pre-existing mainline capacity or expansion capacity created by adding compression, Commission policy generally requires a pipeline to use its existing interruptible recourse rate for interruptible shippers, even when the Commission approves incremental rates for firm service using the expansion capacity.<sup>24</sup> Consistent with this policy, Rockies Express is directed to provide all interruptible mainline service under Rate Schedule ITS.

20. To ensure that existing customers do not subsidize gas fuel and electric costs to operate the project facilities and expansion capacity, Rockies Express proposes to charge firm expansion shippers a separately-stated fuel charge of 1.24 percent and a separately-stated electric power charge of \$0.0309 per Dth. The currently effective Zone 3 fuel rate and electric cost are 0.13 percent and \$0.0082 per Dth, respectively. The Commission finds that Rockies Express's proposal to charge a separate fuel rate and electric cost is appropriate and will approve Rockies Express's proposed incremental fuel charge and electric power charge for shippers using the project's firm expansion capacity.

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<sup>22</sup> See Schedule 2 of Rockies Express's July 10, 2015 Response to Data Request Issued by Commission staff on July 2, 2015.

<sup>23</sup> The incremental reservation rate of \$0.3629 per Dth/day and the incremental commodity rate of \$0.0015 per Dth are derived by dividing the fixed and variable portions of the first year cost of service (\$105,959,727 and \$444,986, respectively) by the total annual firm design capacity of 292,000,000 Dth (800,000 Dth/day times 365 days).

<sup>24</sup> See, e.g., *Trailblazer Pipeline Company LLC*, 140 FERC ¶ 61,170, at PP 23-24 (2012).

## 1. Negotiated Rate Agreements

21. In support of the project, Rockies Express has entered into binding precedent agreements for 700,000 Dth/day of project capacity. All of the project shippers have elected to receive service at negotiated rates. We will require Rockies Express to file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement<sup>25</sup> and the Commission's negotiated rate policies,<sup>26</sup> at least 30 days, but not more than 60 days, before the in-service date of the proposed facilities.<sup>27</sup>

## 2. Pre-determination Supporting Rolled-in Rate Treatment for Project Costs

22. Rockies Express did not explicitly request a finding supporting a presumption that it will be allowed to roll the costs associated with the project into its existing generally applicable system rates in a future NGA section 4 rate case. However, in accordance with the Certificate Policy Statement, the Commission typically makes a pre-determination of the appropriate pricing for new facilities in the certificate proceeding authorizing construction of these new facilities in order to provide some measure of rate certainty for the applicant and prospective shippers.<sup>28</sup>

23. To support a finding creating a presumption of future rolled-in rate treatment for a project's costs, a pipeline company must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means a pipeline company must show that

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<sup>25</sup> *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).

<sup>26</sup> *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).

<sup>27</sup> 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.

<sup>28</sup> *See Colorado Interstate Gas Company*, 94 FERC ¶ 61,382, at 62,433 (2001).

future revenues associated with the project will exceed costs.<sup>29</sup> The Commission compares the estimated costs of the project to the revenues that are expected to be generated using actual contract volumes at the maximum recourse rate or at the actual negotiated rate, if the negotiated rate is lower than the recourse rate.

24. Each of Rockies Express's six precedent agreements provides for a negotiated reservation rate that is less than the maximum Rate Schedule FTS recourse rate. Based on the 700,000 Dth per day total volumes represented by Rockies Express's six precedent agreements and the shippers' actual negotiated reservation and commodity charges, the estimated first year reservation and commodity revenues from the expansion services are expected to be \$124,008,842, which exceed Rockies Express's estimated first year cost-of-service of \$106,404,713 by \$17,604,129. Because the estimated revenues exceed the projected cost of service, there will be a presumption of rolled-in rate treatment for the costs and revenues associated with the project in a future NGA section 4 rate case, absent a significant change in material circumstances.

25. However, to ensure that costs may be properly allocated in the case of changed circumstances, we will direct Rockies Express to keep separate books and accounting of costs attributable to the project in the same manner that section 154.309 of the regulations requires pipeline companies to account for costs and revenues when the Commission approves incremental rates for services using proposed expansion capacity.<sup>30</sup> The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the

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<sup>29</sup> See, e.g., *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at P 23.

<sup>30</sup> Although Rockies Express will not be charging incremental rates for the expansion capacity approved by this order, the Commission has also imposed separate accounting requirements for expansion projects in proceedings where a pipeline company was authorized to charge its generally applicable rates for the expansion capacity in recognition of the fact that separate accounting can assist parties in a future rate proceeding evaluate whether there have been any significant changes in circumstances affecting the basis for the finding in the certificate proceeding that rolled-in rate treatment for a project's costs and revenues was appropriate. See, e.g., *Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311, at P 36 (2015).

data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.<sup>31</sup>

### C. Environmental Analysis

26. On April 29, 2015, Commission staff issued a Notice of Intent (NOI) to prepare an EA for Rockies Express's proposed East-to-West Expansion Project. The NOI was published in the *Federal Register*.<sup>32</sup> Commission staff mailed the NOI to interested parties including: federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; interested individuals and groups; parties to this proceeding; and landowners in the vicinity of the project (i.e., landowners within one-half mile of the compressor stations).

27. In response to the NOI, the Commission received comments from the U.S. Fish and Wildlife Service (FWS) and several landowners near the proposed new Columbus Compressor Station in Pickaway County, Ohio. The environmental concerns included impacts on visual resources, water quality, wildlife, property values, air quality, noise, and public safety. Several alternative sites for the Columbus Compressor Station were also proposed. As noted earlier, Allegheny, Heartwood, Ohio Valley, and Freshwater (collectively, Allegheny) jointly filed comments concerning the adequacy of Commission staff's analysis under the National Environmental Policy Act of 1969 (NEPA).<sup>33</sup> Allegheny's comments addressed cumulative impacts, segmentation, and indirect and cumulative impacts of natural gas drilling in the Marcellus and Utica shale regions.

28. To satisfy the requirements of NEPA, our staff prepared an EA for Rockies Express's proposal. The analysis in the EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. On August 31, 2015, Commission staff placed the EA into the public record and issued the EA for a 30-day public comment period.

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<sup>31</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at PP 23-25 (2008). Order No. 710 amended the Commission's forms for the periodic reporting of information including cost and revenue data.

<sup>32</sup> 80 Fed. Reg. 26,024 (May 6, 2015).

<sup>33</sup> 42 U.S.C. §§ 4321 *et seq.* (2012).

Commission staff addressed all substantive comments received in response to the NOI in the EA.

29. During the EA's 30-day comment period, the Commission received comments from FWS, the State of Indiana Department of Natural Resources, Division of Fish and Wildlife (Indiana DNR), and the U.S. Environmental Protection Agency (EPA). Indiana DNR's filing provided recommendations addressing potential impacts to stream, riparian, and wetland habitat, as well as fish and wildlife mitigation measures. We believe the issues raised by Indiana DNR were adequately addressed in the EA. In addition, the Ohio Department of Natural Resources filed a copy of its May 8, 2015 consultation letter recommending coordination with FWS. Coordination with FWS was also addressed in the EA. On October 12, 2015, Rockies Express filed supplemental information in response to EPA's comments and recommendations.

30. Pursuant to section 7(a)(2) of the Endangered Species Act (ESA), on September 1, 2015, Commission staff requested FWS concurrence on its determinations that the East-to-West Expansion Project may affect but is not likely to adversely affect the Indiana bat or the northern long-eared bat. Based on the minimal amount of tree clearing (two acres) required and Rockies Express's commitment to conduct tree clearing between October 1 and March 31, FWS concurred with Commission staff's determination by letter filed on September 16, 2015. FWS's concurrence concludes the ESA section 7 consultation process. Therefore, environmental condition number 12 recommended in the EA is no longer required and is not included as an environmental condition in Appendix B to this order.

31. As noted above, the EA addressed all substantive comments received in response to the NOI in this proceeding. Below, we include additional discussion addressing comments filed by Allegheny in response to the NOI and the environmental comments and recommendations received from EPA following issuance of the EA.

### **1. Scope of Environmental Document**

32. The Council on Environmental Quality (CEQ) regulations require the Commission to consider "connected actions," "cumulative actions," and "similar actions" in its NEPA analyses.<sup>34</sup> "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under

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<sup>34</sup> 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

consideration.”<sup>35</sup> Allegheny asserts that the Commission has failed to perform an adequate NEPA review of Rockies Express’s East-to-West Project,<sup>36</sup> East-to-West Expansion Project, and Seneca Lateral Projects<sup>37</sup> by failing to consider the three projects as connected, cumulative, and similar actions. As discussed below, we do not agree that the referenced projects can be properly characterized as connected, cumulative, or similar actions such that the Commission would be required to consider the projects in a single environmental document. In any event, in the EA for the East-to-West Expansion Project, Commission staff performed an analysis to identify any cumulative impacts the

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<sup>35</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. See *San Juan Citizens’ Alliance v. Salazar*, CIV.A.00CV00379REBCBS, 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’”).

<sup>36</sup> Rockies Express filed its application for the East-to-West Project in Docket No. CP14-498-000 on June 10, 2014. The Commission issued its order granting a certificate for the project on February 27, 2015. *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 (2015).

<sup>37</sup> Rockies Express filed in Docket No. CP13-539-000 on August 26, 2013, giving the Commission advance notification, as required under section 284.11 of the Commission’s regulations, of its plans to undertake construction of facilities (i.e., the Seneca Lateral, the Seneca Lateral Compression Station, an upstream meter station and interconnection at the MarkWest processing plant, and a downstream meter station and interconnection at Rockies Express’s mainline) to provide service solely under section 311 of the Natural Gas Policy Act (NGPA). Rockies Express filed advance notification of its second Seneca Lateral Project under NGPA section 311 in Docket No. CP14-194-000 on April 18, 2014. That project added three compressor units at the Seneca Lateral Compressor Station and made modifications to the measurement facilities at the lateral’s upstream interconnection with the MarkWest processing plant. On March 2, 2015, Rockies Express filed its pending application in Docket No. CP15-102-000 for certificate authority to use the Seneca Lateral facilities for services under Rockies Express’s Part 284 blanket transportation certificate. As discussed below, Rockies Express’s application for authorization to use the existing Seneca Lateral facilities for service under the NGA involves no new construction and will have no effect on the operation of the Seneca Lateral facilities.

East-to-West Expansion Project may have had when added to the impacts of the Seneca Lateral and East-to-West Projects and no significant impacts were identified.<sup>38</sup>

a. *Connected Actions*

33. “Connected actions” include actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.<sup>39</sup>

34. In evaluating whether connected actions are improperly segmented, courts apply a “substantial independent utility” test. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”<sup>40</sup> For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. Similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”<sup>41</sup>

35. In *Del. Riverkeeper Network v. FERC (Delaware Riverkeeper)*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.<sup>42</sup> The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.<sup>43</sup> Courts have subsequently

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<sup>38</sup> See EA at 34-38.

<sup>39</sup> 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

<sup>40</sup> *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); see also *O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5<sup>th</sup> Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability”).

<sup>41</sup> *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

<sup>42</sup> *Del. Riverkeeper Network*, 753 F.3d at 1308.

<sup>43</sup> *Id.*

indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.<sup>44</sup> Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.<sup>45</sup>

36. If each has independent utility, the Commission is not required to jointly consider projects that modify the same pipeline system.<sup>46</sup> In *Myersville Citizens for a Rural Community, Inc. v. FERC (Myersville)*, petitioners opposed construction of the Myersville Compressor Station approved by the Commission as part of a project proposed by Dominion Transmission, Inc. (Dominion) to increase its system's pipeline and storage capacity. At the time of the approval, Dominion Transmission's affiliate, Dominion Cove Point LNG (Cove Point LNG), had a pending application requesting authorization to add facilities to produce liquefied natural gas (LNG) for storage and export from its LNG terminal.<sup>47</sup> One of the firm transportation service shippers that contracted with Dominion for the pipeline expansion capacity created in part by the new Myersville Compressor Station was a local distribution company (LDC) that also had a firm service agreement with Cove Point LNG for the transportation of natural gas on Cove Point LNG's interconnecting pipeline from interconnects with other interstate pipelines to delivery points with the LDC. As the court acknowledged, if the LDC was not using its full pipeline capacity, the excess capacity could be used for interruptible service, making it possible for some natural gas passing through Dominion's Myersville Compressor Station to reach Cove Point LNG's terminal for liquefaction and export.<sup>48</sup>

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<sup>44</sup> *Minisink Residents for Env'tl. Pres. and Safety v. FERC (Minisink Residents)*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

<sup>45</sup> *See Myersville Citizens for a Rural Cmty. Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

<sup>46</sup> *See id.*

<sup>47</sup> *Id.* at 1313-14.

<sup>48</sup> *Id.* At the time of the *Myersville* decision, Cove Point LNG's terminal did not yet have any capability to liquefy gas and therefore its terminal was not yet receiving any domestically-produced gas. However, Cove Point LNG's 88-mile-long pipeline was already bi-directional and could receive domestic gas supplies from several pipelines, including its affiliate Dominion, via interconnections at the western end of Cove Point LNG's pipeline and make deliveries of that gas at points other than the interconnection

Despite this possibility, the court rejected petitioners' argument that the compression facilities at the Myersville station were overbuilt in order to support LNG exports from the Cove Point LNG terminal and instead found that the facilities were necessary to ensure that Dominion could satisfy its firm service obligations to its customers during peak demand periods.<sup>49</sup> Similarly, again rejecting the assertion that the Myersville Compressor Station was overbuilt to provide excess gas for export from the Cove Point LNG terminal, the court held that the projects were not connected actions.<sup>50</sup>

37. Rockies Express's mainline pipeline has interconnections along its route that enable it to receive gas from or deliver gas to a number of other pipeline systems. In its easternmost Zone 3 rate zone, Rockies Express has interconnections with other pipelines at the Clarington Hub (OH); the Lebanon Hub (OH); ANR/Shelby (IN); Putnam (IN); Edgar (IL); Douglas (IL); Moultrie (IL); and Mexico (MO). As discussed above, Rockies Express's 1,698-mile-long mainline was originally configured to transport natural gas from west-to-east only, but, beginning in 2013, Rockies Express began a series of projects to support east-to-west service within Zone 3.

38. As explained below, none of Rockies Express's projects depend on any other projects for their justification. Rockies Express's projects, therefore, are similar to the projects at issue in *Myersville* where the court concluded that the Dominion and Cove Point LNG projects were not connected actions because neither project depended on the other for justification. In contrast, the Rockies Express projects are unlike those at issue in *Delaware Riverkeeper* where the same court found that all of the projects were interdependent and thus connected actions.

39. In *Delaware Riverkeeper*, the court addressed a challenge to the Commission's approval of Tennessee Gas Pipeline Company's (Tennessee) Northeast Upgrade Project in which petitioners alleged that the Commission had violated NEPA by failing to jointly consider in a single environmental review the Northeast Upgrade Project along with three other Tennessee projects proposing upgrades to the Eastern Leg of Tennessee's 300 Line. The court found that the Commission was unable to show that the four projects along the Eastern Leg of the 300 Line were divided pursuant to "logical termini,"<sup>51</sup> and also failed

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with the LNG terminal. *Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018, at P 26 (2008).

<sup>49</sup> *Myersville*, 783 F.3d at 1313-14.

<sup>50</sup> *Id.* at 1326.

<sup>51</sup> *Del. Riverkeeper Network*, 753 F.3d at 1315-16.

to demonstrate that the Northeast Upgrade Project resulted in a pipeline segment with substantial independent utility apart from the three other upgrade projects on the Eastern Leg.<sup>52</sup> Observing that the projects created “fifteen interlocking loop segments of new pipeline that completed a full and continuous upgrade of the Eastern Leg of the 300 Line,”<sup>53</sup> the court concluded that the four projects resulted in “a new pipeline that functions as a unified whole.”<sup>54</sup>

40. However, the *Delaware Riverkeeper* court emphasized that the timing of the four projects was a significant factor in its decision.<sup>55</sup> As the court explained, while the Northeast Upgrade Project application was before the Commission, three other projects to loop and increase compression on other portions of the Eastern Leg of Tennessee’s 300 Line were either under construction or also pending before the Commission for environmental review.<sup>56</sup> For this reason, the court concluded that “it was clear that the entire Eastern Leg was included in a complete overhaul and upgrade that was physically, functionally, and financially connected and interdependent.”<sup>57</sup>

41. Subsequently, in *Minisink Residents*, the same court reiterated the importance that the timing of both Tennessee’s project proposals and the Commission’s environmental reviews played in the court’s decision in *Delaware Riverkeeper*. In *Minisink Residents*, the court restated the timing at issue in *Delaware Riverkeeper* and explained that “[t]hose critical facts are worlds apart from this case. At the time of its application for the Minisink Project, Millennium had not yet applied for approval of the Hancock Project, nor was construction on either project underway. Furthermore, once plans for the Hancock Project were cemented and presented to the Commission for approval under section 7, the Commission did examine that project alongside the Minisink Project (then in the midst of development), and the resulting EA found no significant cumulative impacts associated with the two projects.”<sup>58</sup>

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<sup>52</sup> *Id.* at 1316-17.

<sup>53</sup> *Id.* at 1308.

<sup>54</sup> *Id.* at 1309.

<sup>55</sup> *Id.* at 1318.

<sup>56</sup> *Id.* at 1308.

<sup>57</sup> *Id.*

<sup>58</sup> *Minisink Residents*, 762 F.3d 97, at n. 11.

42. As noted above, on August 26, 2013, Rockies Express filed the advance notification required under section 284.11 of the Commission's regulations for its NGPA section 311 project to construct the 14.7-mile-long Seneca Lateral and Seneca Lateral Compressor Station to deliver gas from a processing plant in Noble County, Ohio, to an interconnection near the eastern end of its mainline system.<sup>59</sup> As provided in section 284.11(c)(2)<sup>60</sup> of the Commission's regulations, Rockies Express's authorization to proceed with the project under NGPA section 311 was contingent on its compliance with the blanket certificate regulations' environmental conditions set forth in section 157.206 of the Commission's regulations.<sup>61</sup> After verifying Rockies Express's compliance with those conditions, Commission staff issued its Environmental Assessment Report in Docket No. CP13-539-000 on September 25, 2013, providing the necessary clearance for Rockies Express to proceed with construction of the Seneca Lateral and Seneca Lateral Compressor Station. Rockies Express placed the Seneca Lateral and the first two compressor units of the Seneca Lateral Compressor Station on June 20, 2014, and November 1, 2014, respectively.

43. Once the Seneca Lateral was placed in service on June 20, 2014, it was able to deliver gas into Rockies Express's mainline at sufficient pressure to enable Rockies Express to provide east-to-west transportation service on the mainline when it was not operating the mainline's compression facilities, which at the time could only be used to push gas in the mainline from west to east.<sup>62</sup> On April 18, 2014, Rockies Express

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<sup>59</sup> See Docket No. CP13-539-000.

<sup>60</sup> 18 C.F.R. § 284.11(c)(2) (2015).

<sup>61</sup> 18 C.F.R. § 157.206(b) (2015).

<sup>62</sup> See Rockies Express June 12, 2015 Response to Data Request in Docket No. CP15-102-000 (indicating that as of January 20, 2015, and prior to approval of the East-to-West Project, service for its shipper on the Seneca Lateral included deliveries at the Moultrie, Edgar, Morgan, Lebanon, Shelby, and Decatur delivery points on the mainline, all of which are west of the Seneca Lateral's interconnection with the mainline).

Additionally, Commission staff reviewed the flow diagrams Rockies Express filed in Docket No. CP15-102-000 and confirmed that Rockies Express was able to deliver gas transported on the Seneca Lateral to mainline delivery points west of the lateral's interconnection with the mainline prior to the East-to-West Project's bidirectional modifications.

(continued...)

filed the required advance notification for its second Seneca Lateral Project to install three additional compressor units at the Seneca Lateral Compressor Station. On May 19, 2014, Commission staff issued its Environmental Assessment Report verifying Rockies Express's compliance with applicable environmental conditions.<sup>63</sup>

44. Thus, while Rockies Express did not place the Seneca Lateral's additional compression facilities in service until January 20, 2015, the Commission had completed its review in connection with all of the Seneca Lateral facilities by May 19, 2014, before Rockies Express filed its June 10, 2014 application for its East-to-West Project to make its mainline compression facilities bidirectional, allowing gas to be pushed from east to west. Further, Rockies Express was able to use all of the Seneca Lateral's 600,000 Dth/day capacity (including the capacity created by the additional compression placed in service on January 20, 2015) and deliver all of the volumes at delivery points on the mainline because the Seneca Lateral delivered the gas to the mainline at sufficient pressure to move the gas from east to west as long as the mainline compression facilities were not being operated to push gas from west to east. Thus, Rockies Express's Seneca Lateral Projects clearly were not dependent either operationally or financially on its East-to-West Project, which proposed to make its mainline compression facilities bidirectional. As noted, an application for the East-to-West Project was not filed until

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Moreover, in a June 6, 2013 petition for declaratory order, Rockies Express explained that it could physically flow gas east to west by turning off or bypassing the mainline's single-direction compression because "the pressure necessary for the gas to enter [the] Rockies Express mainline will ensure gas can flow east to west." *See* Rockies Express June 6, 2013 Petition for Declaratory Order in Docket No. RP13-169-000 at 15 and n. 39. In its application for the East-to-West Project, Rockies Express also stated that as the result of placing the Seneca Lateral and its compression facilities into service, the mainline already had 600,000 Dth per day of east-to-west forward-haul capability (i.e., Rockies Express was able to physically flow 600,000 Dth of gas per day from east to west in the mainline). *See Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at n.7 (citing Rockies Express's June 10, 2014 application in Docket No. CP14-498-000 at 7, n.2).

<sup>63</sup> Rockies Express's advance notification and Commission staff's environmental assessment report for the proposed additional compression at the Seneca Lateral station were filed in Docket No. CP14-194-000. Neither of Rockies Express's Seneca Lateral Projects involved any construction activities on the mainline, at the mainline compressor stations, or the mainline delivery points.

June 10, 2014, was not approved until February 27, 2015,<sup>64</sup> and not completed until September 1, 2015.<sup>65</sup>

45. The above descriptions make it clear that the circumstances here are unlike those at issue in *Delaware Riverkeeper*, where the court determined that Tennessee's four pipeline looping projects on the 300 Line's Eastern Leg would leave infrastructure gaps until all of the projects were complete and that none of the projects resulted in a segment with substantial independent utility apart from other segments of the Eastern Leg.<sup>66</sup> Rockies Express's Seneca Lateral Projects did not create any infrastructure gaps to be filled by the East-to-West Project;<sup>67</sup> and neither the Seneca Lateral Projects nor the East-to-West Project left any infrastructure gaps to be filled by Rockies Express's East-to-West Expansion Project, which proposes to add three new mainline compressor stations and additional compressor units at an existing station to meet the demand for

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<sup>64</sup> *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 (2015).

<sup>65</sup> See Rockies Express's September 2, 2015 Notice of Commencement Date of Service in Docket No. CP14-498-000.

<sup>66</sup> See *Del. Riverkeeper Network*, 753 F.3d at 1309.

<sup>67</sup> The Seneca Lateral's design capacity of 600,000 Dth per day, including the capacity created by the additional compressor units placed in service at the Seneca Compressor Lateral Station on January 20, 2015, is equal to the maximum firm contract volumes called for under Rockies Express's service agreement with Antero Resources Corporation which contracted under section 311 of the NGPA for 600,000 Dth per day of service on the Seneca Lateral and mainline to mainline delivery points. As noted above, Rockies Express explained in its application for the East-to-West Project that placing the Seneca Lateral and the Seneca Lateral's compression facilities into service had already created 600,000 Dth per day of east-to-west forward-haul capability on the mainline. See *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at n.7 (citing Rockies Express's June 10, 2014 application in Docket No. CP14-498-000 at 7, n.2).

additional east-to-west service.<sup>68</sup> Each of these projects is financially and functionally independent of the others.<sup>69</sup>

46. Rather than filling infrastructure gaps, a problem identified in *Delaware Riverkeeper*, the East-to-West Expansion Project is a response to additional demand for firm east-to-west transportation service on the Rockies Express system. The expansion would result in different mainline capacity levels to support firm transportation service at multiple delivery points, allowing Rockies Express to deliver natural gas from receipts at Clarington, Ohio, (800,000 Dth per day) to the Lebanon Hub (520,000 Dth per day) and the Moultrie meter site (280,000 Dth per day). Consequently, Rockies Express proposes to increase the pipeline's maximum east-to-west flow design capability to 2,600,000 Dth per day from Monroe County, Ohio, to the Lebanon meter site, and up to 2,080,000 Dth per day from the Lebanon meter site to the Moultrie meter site.

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<sup>68</sup> Before filing its application for the East-to-West Project, Rockies Express held an open season soliciting bids for firm east-to-west service on the mainline. The open season resulted in precedent agreements with four shippers for 1,200,000 Dth per day of firm east-to-west service. *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at P 4. The East-to-West Project enabled the mainline to provide an additional 1,200,000 Dth per day of firm east-to-west service in Zone 3 and to make all of the Zone 3 meter stations bidirectional. The East-to-West Project also increased capacity at several Zone 3 delivery/receipt points (Putnam, Douglas, and Moultrie) by a total of 1,390,000 Dth per day. *Id.* P 3. This allowed Rockies Express to better accommodate its shippers' flexible delivery and receipt point rights and the volumes and delivery points nominated by its shippers, including Antero, which had a service agreement for 600,000 Dth per day of firm service on the Seneca Lateral to mainline delivery points, including two of the delivery points (Putnam and Moultrie) where capacity would be increased by the East-to-West Project. *See* Rockies Express's June 12, 2015 data response in Docket No. CP15-102-000.

<sup>69</sup> As discussed above, there will be a presumption of rolled-in rate treatment for the East-to-West Expansion Project's costs and revenues in a future NGA section 4 rate case, absent a significant change in material circumstances, because the estimated revenues from the capacity to be created by the East-to-West Expansion Project exceed the projected associated cost of service. For the same reasons, the Commission found that there will be a presumption of rolled-in rate treatment for Rockies Express's East-to-West Project. *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 at P 23.

47. Granted, when Rockies Express filed its application for the East-to-West Expansion Project on March 31, 2015, it had not yet completed constructing its East-to-West Project's modifications to make its existing mainline compression facilities bidirectional so that they can also be used to push gas in the mainline from east to west. However, as the *Delaware Riverkeeper* court recognized in its *Myersville* decision, when projects are neither functionally nor financially interdependent, they do not become connected actions as contemplated by NEPA simply because shippers that will use capacity to be created by one project may also use capacity that will be created by the other project.<sup>70</sup>

48. Each of Rockies Express's projects has independent utility and none of the projects is financially or functionally dependent on another project. Therefore, the projects are not connected actions that required joint consideration during the same NEPA review prior to authorization. However, as discussed below, Commission staff performed a cumulative impacts analysis in the instant proceeding in order to identify potential cumulative impacts from Rockies Express's East-to-West Expansion Project, East-to-West Project, and Seneca Lateral Projects.

**b. Cumulative Actions**

49. "Cumulative actions" are those "which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."<sup>71</sup> Allegheny asserts that Rockies Express's proposed East-to-West Expansion Project and its Seneca Lateral Projects and East-to-West Project are cumulative actions.

50. We disagree that Rockies Express's proposed East-to-West Expansion Project, East-to-West Project, and Seneca Lateral Projects are "cumulative actions" as defined by section 1508.25(a)(2) of CEQ's regulations. As noted above, cumulative actions must be discussed in the same impact statement only if such actions, when viewed with other proposed actions, "have cumulatively significant impacts."<sup>72</sup> In response to Allegheny's comments on the NOI, Commission staff evaluated whether the East-to-West Project or the Seneca Lateral Projects could cumulatively impact the same resources as the East-to-West Expansion Project. Because of the project's limited region of influence, with the impacts associated with the East-to-West Expansion Project primarily being confined to

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<sup>70</sup> *Myersville*, 783 F.3d at 1326-27.

<sup>71</sup> 40 C.F.R. § 1508.25(a)(2) (2015).

<sup>72</sup> *Id.*

the compressor station sites, the EA concluded that the projects' potential for cumulative impacts would be limited to air quality.

51. In analyzing the projects' potential cumulative impacts on air quality, the EA explained that construction of the East-to-West Project's bidirectional modifications and the Seneca Lateral Projects resulted in temporary air emissions that were limited in duration to each project's respective construction phase.<sup>73</sup> While the East-to-West Project did not result in any additional stationary air emissions sources, operation of the Seneca Lateral Compressor Station results in emissions of criteria pollutants and greenhouse gases (GHGs), as would the East-to-West Expansion Project if approved.<sup>74</sup> The EA also states that the additional compression added to the Seneca Lateral Compressor Station also contributes to any regional cumulative impact on air quality.<sup>75</sup> However, based on the distance between the Seneca Lateral Compressor Station and any of Rockies Express's existing or proposed compression facilities, Commission staff concluded that cumulative impacts on air quality would not be significant.<sup>76</sup> In other words, Commission staff determined that the projects' potential impacts on air quality, when viewed together, do not rise to the level of cumulatively significant impacts. Therefore, the Seneca Lateral Projects, the East-to-West Project, and the East-to-West Expansion Project are not cumulative actions and consideration in the same environmental document was not warranted.

52. Further, the courts have indicated that an agency is not required to analyze actions in the same environmental document if that agency did not intend to segment review to minimize its cumulative impacts analysis.<sup>77</sup> Nothing in the record suggests that Commission staff's goal was to minimize its cumulative impact analysis of the East-to-West Expansion Project.<sup>78</sup> In fact, the EA explicitly discussed the cumulative impact of the East-to-West Expansion Project when added to the East-to-West Project and the Seneca Lateral Projects. The courts have allowed an agency to assess the cumulative

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<sup>73</sup> EA at 36.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305 (9th Cir. 2003) (*Earth Island*) (citing *Churchill Cnty v. Norton*, 276 F.3d 1060, 1079-80 (9th Cir. 2001)).

<sup>78</sup> *See Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895 (9th Cir. 2002).

impacts of an action but not consider that action with the proposed project in a single environmental document.<sup>79</sup> Thus, staff appropriately analyzed these projects in the cumulative impacts section of the EA, which informed the decision not to analyze these projects as cumulative actions.

**c. Similar Actions**

53. 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.”<sup>80</sup> Unlike connected and cumulative actions, analyzing similar actions is not always mandatory.<sup>81</sup> 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.”<sup>82</sup>

54. We disagree with Allegheny’s contention that the East-to-West Expansion Project, the East-to-West Project, and the Seneca Lateral Projects are similar actions for purposes of our NEPA analysis. Each is a distinct and separate project that has been or is being addressed in individual Commission proceedings.

55. As discussed above, the East-to-West Project involved, among other things, modifications to piping at Zone 3 compressor stations, including the Chandlersville Compressor Station in Muskingum County, Ohio, and the Hamilton Compressor Station in Warren County, Ohio, to allow for the bidirectional flow of gas on Rockies Express’s mainline. While the instant East-to-West Expansion Project will include additional gas compression at the Chandlersville Compressor Station, and gas cooling facilities and a power distribution building at both the Chandlersville and Hamilton Compressor Stations, most of the project construction will be associated with the addition of three new compressor stations. Construction of the new compressor stations will not have impacts on any of the same areas that were impacted by the East-to-West Project. Further, while resources in the vicinity of the Chandlersville and Hamilton Compressor Stations will be subject to impact by both the East-to-West and the East-to-West Expansion Projects, the East-to-West Project’s construction activities at the

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<sup>79</sup> See *Earth Island*, 351 F.3d at 1305.

<sup>80</sup> 40 C.F.R. § 1508.25(a)(3) (2015).

<sup>81</sup> See *supra* note 35.

<sup>82</sup> 40 C.F.R. § 1508.25(a)(3) (2015).

Chandlersville and Hamilton compressor stations required only minor, temporary ground disturbance in previously disturbed areas within the respective fence lines.<sup>83</sup> Because the East-to-West Project's modifications to the Chandlersville and Hamilton Compressor Stations did not result in increased emissions during operation of the compression facilities and did not result in any new emission sources, the East-to-West Project's only new air quality impacts at these sites were the result of construction emissions.<sup>84</sup> Consequently, the impacts, including impacts on air quality, from the East-to-West Project's construction activities at the Chandlersville and Hamilton Stations were temporary, ceasing with the end of the construction activities which were completed by July 9, 2015, at both stations. The anticipated in-service date for the East-to-West Expansion Project is June 6, 2017. While the compression facilities being added at the Chandlersville Station as part of the East-to-West Expansion Project will result in increased emissions when all the compression facilities are being operated, impacts from the construction activities at both the Chandlersville and Hamilton Compressor Stations are expected to cease with the completion of the construction.

56. In view of the above considerations, we find that for purposes of environmental impacts, the East-to-West Project and East-to-West Expansion Project do not share common timing. Further, while they do share some common geography (i.e., areas within the fenced yards at the Chandlersville and Hamilton Compressor Stations), the limited impacts of the projects on resources in their vicinity will not overlap, due to their short duration and the disparate timing of construction.

57. Nor did Rockies Express's Seneca Lateral Projects share common timing, geography, or impacts with the East-to-West Expansion Project. As discussed above, Rockies Express provided advance notification in August 2013 of its plans to commence construction of the Seneca Lateral and Seneca Lateral Compressor Station under NGPA section 311, and placed the facilities in service in June 2014 and November 2014, respectively. Rockies Express provided advance notification of its NGPA section 311 project to add compression facilities at the Seneca Lateral Compressor Station in April 2014, and placed those facilities in service in January 2015. Further, although Rockies Express filed for certificate authority to use the Seneca Lateral facilities for services under its Part 284 blanket transportation certificate in March 2015, that application does not involve any ground disturbing actions, construction activities, or operational changes to the existing facilities. Thus, Commission staff determined that

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<sup>83</sup> East-to-West Project EA at 4 (issued November 24, 2014 in Docket No. CP14-498-000) (East to West Project EA).

<sup>84</sup> East-to-West Project EA at 19.

Rockies Express's request for authorization to use facilities previously constructed under NGPA section 311 for service under NGA section 7 is an administrative action, which qualifies under section 380.4(a)(32) of the Commission's regulations as a categorical exclusion for which preparation of an environmental assessment is not required.<sup>85</sup> Therefore, Commission staff satisfied its NEPA obligations for Rockies Express's application for certificate authority to use the existing Seneca Lateral facilities for service under the NGA.<sup>86</sup>

58. The fact that each of the identified projects may be used to process or transport Marcellus shale gas does not mean that the projects are so closely related to each other that NEPA requires concurrent analysis. Further, as discussed in more detail below, the Commission can only speculate about the extent, scale, scope, and timing of the gas production industry's future development of the Marcellus shale or the new interstate pipeline projects that might ultimately be proposed to transport Marcellus gas. Given the relevant circumstances regarding these projects' timing, place, and impacts, and the fact that future development of gas production and pipeline infrastructure that may be related to any of these projects is not reasonably foreseeable, the EA for the East-to-West Expansion Project appropriately did not include the East-to-West Project or the Seneca Lateral Projects as similar actions.

59. Even if, for the sake of argument, the Commission were to find that the East-to-West Expansion Project and any of the projects identified by Allegheny were similar actions, our determination as to whether to prepare a programmatic EIS is discretionary. CEQ states, "[a]n agency *may* wish to analyze [similar] actions in the same impact statement. 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."<sup>87</sup> We do not find that such a multi-project analysis would be the best

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<sup>85</sup> 18 C.F.R. § 380.4(a)(32) (2015) (identifying "conversion of facilities from use under the NGPA to use under the NGA" as a project or activity that does not require preparation of an environmental assessment or environmental impact statement).

<sup>86</sup> See Commission staff's July 14, 2015 Environmental Assessment Report filed in Docket No. CP15-102-000.

<sup>87</sup> 40 C.F.R. § 1508.25(a)(3) (2015) (emphasis added). See also *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgt.*, 387 F.3d 989, 1001-01 (9th Cir. 2004) (emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the best way to do so).

way to assess the impacts or alternatives to the East-to-West Expansion Project and any other project.

## 2. Indirect Effects of Natural Gas Production

60. CEQ's regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.<sup>88</sup> Indirect impacts are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects 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."<sup>89</sup> Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

61. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"<sup>90</sup> in order "to make an agency responsible for a particular effect under NEPA."<sup>91</sup> As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]."<sup>92</sup> Thus, "[s]ome effects that are 'caused by' a change in the physical environment in the sense of 'but for' causation," will not fall within NEPA if the causal chain is too attenuated.<sup>93</sup> Further, the Court has stated that "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect."<sup>94</sup>

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<sup>88</sup> See 40 C.F.R. § 1508.25(c) (2015).

<sup>89</sup> See 40 C.F.R. § 1508.8(b) (2015).

<sup>90</sup> *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Metro. Edison*, 460 U.S. at 774.

<sup>94</sup> *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 770.

62. An effect 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.”<sup>95</sup> NEPA requires “reasonable forecasting,” but 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.”<sup>96</sup>

63. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, would be on a local and regional level. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act. The EPA also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

64. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations.<sup>97</sup> A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).<sup>98</sup> To date, the Commission has not been presented

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<sup>95</sup> *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

<sup>96</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

<sup>97</sup> *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 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

<sup>98</sup> *Cf. Sylvester v. U.S. Army Corps of Engin'rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). *See also Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from

(continued...)

with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed pipeline as best suited for moving their gas to market.

65. Even accepting, *arguendo*, that a specific pipeline project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.<sup>99</sup>

66. Allegheny asserts that the Commission must consider the indirect effects of shale gas drilling in the Marcellus and Utica shale formations.

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airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. United States Dept. of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project’s potential to induce additional development).

<sup>99</sup> *Habitat Educ. Ctr.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with enough specificity to make their consideration meaningful need not be included in the environmental analysis).

67. Potential environmental effects associated with Marcellus and Utica shale region production are not sufficiently causally related to Rockies Express's proposed East-to-West Expansion Project to warrant a detailed analysis as indirect impacts of the project.<sup>100</sup> Allegheny fails to identify any induced natural gas production causally associated with the East-to-West Expansion Project, other than to note Rockies Express's open season notice stating that the capacity created by the East-to-West Expansion Project will be well-positioned to receive and transport supplies from the Utica and Marcellus shale plays, as well as other conventional Appalachian production. Moreover, while the capacity created by the East-to-West Expansion Project may be used to transport conventional or unconventional gas production in the Marcellus or Utica shale regions, the purpose of the East-to-West Expansion Project is to enable Rockies Express to provide an additional 800,000 Dth/d of firm transportation service for shippers, regardless of where the gas is produced; the project purpose is not to facilitate additional natural gas production in any particular region, which may occur for reasons unrelated to the project and over which the Commission has no jurisdiction. In any event, unconventional production will likely continue regardless of whether the East-to-West Expansion Project is approved because multiple existing and proposed transportation alternatives are available for regional production.

68. Even if a causal relationship between approval of Rockies Express's East-to-West Expansion Project and induced gas production were shown, the impacts from induced production on the environment are not reasonably foreseeable as contemplated by CEQ's regulations and case law. Even considering Rockies Express's statement that the capacity created by the East-to-West Expansion Project will be well-positioned to transport Appalachian production, we can only speculate on the exact location, scale, scope, and timing of future production-related facilities. Such speculation would not meaningfully inform our decision here, and therefore, the impacts from shale production are not reasonably foreseeable.

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<sup>100</sup> 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. 472, 474-75 (2d Cir. 2012) (upholding the Commission's analysis of the development of Marcellus shale 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).

### 3. Cumulative Effects of Natural Gas Production

69. CEQ defines “cumulative impact” as “the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions . . . .”<sup>101</sup> The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

70. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”<sup>102</sup> CEQ has explained that “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.”<sup>103</sup> Further, a cumulative impact analysis need only 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.”<sup>104</sup> An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.<sup>105</sup>

71. As we have explained, consistent with CEQ guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.<sup>106</sup> While the scope of our cumulative impacts analysis will vary from case to case, depending on the

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<sup>101</sup> 40 C.F.R. § 1508.7 (2015).

<sup>102</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976) (*Kleppe*).

<sup>103</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997).

<sup>104</sup> *Id.*

<sup>105</sup> See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005).

<sup>106</sup> See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.<sup>107</sup>

72. In addition to indirect effects, Allegheny contends that the Commission must also consider the cumulative effects of shale gas drilling in the Marcellus and Utica Shale formations.

73. Commission staff appropriately determined that any impacts of the East-to-West Expansion Project will not be incremental cumulative environmental impacts of Marcellus and Utica shale gas production. As noted above, and consistent with CEQ guidance, to determine the scope of the cumulative impact analysis in an EA or Environmental Impact Statement (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.

74. Because the impacts associated with Rockies Express’s proposed East-to-West Expansion Project would primarily be limited to the three new compressor stations sites and the two existing compressor stations sites it proposes to modify, the EA concluded that the potential for cumulative impacts would be localized, with the exception of air quality. Commission staff identified the appropriate “region of influence” for considering cumulative effects, and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus and Utica shale formations. 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/or Utica shale formations – bears no relationship to the limited magnitude of Rockies Express’s proposed East-to-West Expansion Project, which involves temporary construction impacts on 80.6 acres and permanent impacts to 33.8 acres of land. Moreover, even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, the impacts from such development are not reasonably foreseeable. Therefore, the broader cumulative impacts analysis sought by Allegheny is not required under NEPA.

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<sup>107</sup> *Id.* P 120.

#### **4. EPA's Recommendations**

75. On October 1, 2015, the U.S. Environmental Protection Agency (EPA) filed comments on the EA for the East-to-West Expansion Project.<sup>108</sup> EPA provided several recommendations, which addressed surface and groundwater quality, an EPA designated sole source aquifer, vegetation and wildlife, air quality, noise, reliability and safety, non-jurisdictional facilities, cumulative impacts, greenhouse gas emissions, and methane leakage.

##### **a. Environmental Inspection**

76. In its comments on the EA, the EPA concurred with Commission staff's recommendation that Rockies Express employ at least two environmental inspectors to ensure that all environmental requirements are satisfied. Environmental Condition 7 of this order requires Rockies Express to employ at least two environmental inspectors for the project.

##### **b. Groundwater**

77. As explained in the EA, the Miami Valley Buried Aquifer, an EPA-designated Sole Source Aquifer (SSA),<sup>109</sup> is within the vicinity of the existing Hamilton Compressor Station. In its comments, EPA stated that it is not clear if the Hamilton Compressor Station is located within the designated SSA boundary and recommended that Rockies Express contact William Spaulding (EPA Region 5's Sole Source Aquifer contact) for further information regarding the Miami Valley SSA. In response to EPA's comments, Rockies Express indicated that it contacted Mr. Spaulding on October 8, 2015, to confirm that the Hamilton Compressor Station is within the SSA and to provide additional information regarding the proposed upgrades to the site.<sup>110</sup>

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<sup>108</sup> In its October 1, 2015 filing, we note that EPA identified several issues to be considered in the preparation of the "final EA." Because Commission staff's August 31, 2015 issuance served as the final EA, we will address the issues raised by EPA in this Order.

<sup>109</sup> A "sole-source aquifer" supplies at least 50 percent of the drinking water in an area where no alternative drinking water source is available that could physically, legally, or economically supply the area. EA at 11.

<sup>110</sup> Rockies Express October 12, 2015 Filing at 1.

78. The depth to the SSA ranges from 30 to 50 feet below ground surface. Construction at the existing Hamilton Compressor Station site will be limited to installation of eight coolers and construction of a power distribution center building, both of which would occur at, or slightly below, grade. Moreover, Rockies Express will implement a Spill Prevention and Response Plan for any activities involving the storage of fuels and other materials to reduce the potential spill impacts. Therefore, we concur with the EA's conclusion that any potential impacts on groundwater will be minimized and that the project will have no adverse impacts on the Miami Valley SSA.

**c. Surface Water and Wetlands**

79. EPA recommended that Rockies Express identify whether chemical additives would be introduced into hydrostatic test water. EPA also suggested that the final environmental document identify the potential municipal and other sources Rockies Express may use for hydrostatic test water and disclose whether or not each potential source is capable of providing the estimated volume required. In its application, Rockies Express indicated that no additives would be introduced to hydrostatic test water.<sup>111</sup> Because hydrostatic testing is not scheduled to occur until late summer or early fall 2016, Rockies Express has not yet identified specific sources. However, the EA indicated that surface waters would not be used. In response to EPA's comments, Rockies Express clarified that it would use previously permitted water sources (municipal, well, or commercial). EPA further recommended that the final environmental document identify the facilities for disposal and treatment of the after-test waters to ensure those facilities can adequately handle and treat the project's hydrostatic waters. The EA noted that disposal would occur at a state approved disposal facility. We conclude that state approval of disposal facilities is sufficient to ensure adequate handling and treatment of the test water.

**d. Revegetation**

80. To promote monarch butterfly and other pollinator species, EPA recommended that the Commission confirm that the National Resource Conservation Service's (NRCS) recommended seed mix contains milkweed and other nectar producing plants. Rockies Express previously committed to incorporating nectar producing plants and milkweed as part of its revegetation of disturbed areas.<sup>112</sup> In response to EPA's comments, Rockies Express confirmed that it has contacted the Ohio and Indiana NRCS field offices to

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<sup>111</sup> Rockies Express March 31, 2015 Application, Resource Report 2, Section 2.2.3.

<sup>112</sup> See Rockies Express June 29, 2015 Data Request Response at 4.

request appropriate seed mixes and will revegetate the Ohio and Indiana compressor station sites with the recommended pollinator seed mix.<sup>113</sup>

e. *Air Quality*

81. EPA recommended that Rockies Express pursue opportunities to use clean diesel equipment, vehicles, and fuels in construction of the project, and that the Commission identify and disclose any opportunities to utilize these measures in the final EA. In response, Rockies Express commits to encouraging its contractors to incorporate use of clean diesel equipment, vehicles, and fuels when practicable during project construction.<sup>114</sup>

f. *Noise*

82. In its comments, EPA recommended that the EA's Table 8 (Estimated Compressor Station Noise Levels) be updated to include noise level information for the existing Hamilton Compressor Station. In response, Rockies Express filed an updated version of Table 8, which includes the noise level information for the Hamilton Compressor Station.<sup>115</sup> The updated section of Table 8 is reproduced below.

NSA	Calculated Ambient	Calculated Max Noise from Station	Noise Increase (dBA)
<b>Hamilton Compressor Station</b>			
NSA 1 (1,900 feet)	70.1	48.0	--
NSA 2 (2,400 feet)	56.4	45.7	--
NSA 3 (3,600 feet)	47.1	41.4	--

83. We note that the findings of the EA remain unchanged and that noise attributable to the modified Hamilton Compressor Station will not increase at any noise sensitive areas (NSA) as a result of the project. To confirm the accuracy of the operation noise level predictions for the Hamilton Compressor Station, Environmental Condition 12 in Appendix B to this Order requires Rockies Express to file a noise survey no later than 60 days after placing the compressor station in service.

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<sup>113</sup> Rockies Express October 12, 2015 Filing at 2.

<sup>114</sup> *Id.* at 3.

<sup>115</sup> *Id.* at 17.

84. Additionally, EPA requested that the final environmental document provide an estimate of the number and duration of anticipated blowdown events and identify noise abatement measures to address these events. Rockies Express previously provided information regarding unit blowdown events.<sup>116</sup> Additionally, Rockies Express submitted the results of a Unit Blowdown Noise Impact Analysis, which demonstrated that the noise levels at the closest NSAs for each compressor station would not exceed the Commission's standard of 55 decibels on the A-weighted scale during a blowdown event.<sup>117</sup> In response to EPA's comments, Rockies Express estimated a lower frequency of two unit blowdown events per year and committed to providing advance notification to nearby NSAs for maintenance-related or other blowdown events. Therefore, we conclude that additional noise abatement measures for unit blowdowns are not warranted.

**g. Reliability and Safety**

85. EPA recommended that the final environmental document include a copy of Rockies Express's continuing education program and emergency plan for the project that incorporates input received from the public, local fire, police and public officials, and the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).

86. PHMSA administers the requirements for each pipeline operator to establish emergency response plans and maintain liaison with appropriate fire, police, and public officials. However, in response to EPA's comments, Rockies Express submitted a Public Awareness Program, which incorporates feedback from the community and local fire, police, and emergency responders. Rockies Express also committed to generating a project specific Emergency Response Plan prior to operation of the project that incorporates the latest PHMSA feedback it received on October 5, 2015.

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<sup>116</sup> Rockies Express June 29, 2015 Data Request Response, Attachment 15 at 1 (“during the period of commissioning and testing, it is estimated that a unit blowdown could occur 2 to 4 times/day and typically only during the daytime. During normal operation of the station (i.e., after the commissioning period), a unit blowdown event occurs infrequently (e.g., 1 to 3 times/month). In addition, a unit blowdown event only occurs for a short time frame (e.g., unit blowdown event would persist for approximately 2 to 5 minutes).”).

<sup>117</sup> Rockies Express June 29, 2015 Data Request Response (Attachment 15).

**h. Non-Jurisdictional Facilities**

87. EPA recommended that the final environmental document include a more detailed analysis of the non-jurisdictional power lines, including mitigation measures, needed to operate the new Columbus, Washington Court House, and St. Paul Compressor Stations.<sup>118</sup> Although these power lines would not fall under the Commission's jurisdiction, Commission staff evaluated the environmental impacts associated with the proposed power lines in section B.11 of the EA.<sup>119</sup> As part of this analysis, Commission staff identified the estimated lengths and acreage required for the non-jurisdictional power line facilities needed to operate the new Columbus, Washington Court House, and St. Paul Compressor Stations.<sup>120</sup> Based on the limited scope and acreage requirements for the facilities and the oversight from permitting authorities,<sup>121</sup> Commission staff concluded that the non-jurisdictional power lines would not result in a significant environmental impact on the project areas.

88. In response to EPA's comments, Rockies Express filed supplemental information regarding the location and disturbance required for electrical lines for the Washington Court House and St. Paul Compressor Stations.<sup>122</sup> Based on this recently updated information, the non-jurisdictional power lines associated with the Columbus, Washington Court House, St. Paul, and Chandlersville Compressor Stations will require, respectively, 0.06 acre, 1.4 acres, 1.0 acre, and 0.41 acre of land.<sup>123</sup> Despite a slight

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<sup>118</sup> On August 24, 2015, Rockies Express filled supplemental information notifying the Commission that a new power line would also be needed for the existing Chandlersville Compressor Station. Rockies Express indicated that the disturbance required for this non-jurisdictional power line would be 0.41 acre (of which 0.34 acre of new disturbance would occur within the previously disturbed site and 0.07 acre of new disturbance would occur outside of the fenced site). Rockies Express August 24, 2015 Filing at 2-3.

<sup>119</sup> EA at 33.

<sup>120</sup> *Id.*

<sup>121</sup> As explained in the EA, the Public Utilities Commission of Ohio has permitting authority for the power lines associated with the Columbus and Washington Court House Compressor Stations, while the Indiana Utility Regulatory Commission has permitting authority over the power line associated with the St. Paul Compressor station. EA at 33.

<sup>122</sup> See Attachment 7, Rockies Express October 12, 2015 Filing at 70.

<sup>123</sup> *Id.*

increase in the land required for the Washington Court House and St. Paul Compressor Stations and the addition of the limited acreage required for the Chandlersville Compressor Station, we agree that the non-jurisdictional power lines would not result in a significant environmental impact. In any event, the Commission does not have the authority to impose mitigation measures on non-jurisdictional facilities. We concur with the conclusions of the EA.

89. EPA recommended that the final environmental document identify the potable water supply source for the Columbus Compressor Station, assess secondary impacts associated with potable water line tie-ins, and describe applicable mitigation measures. In the EA, Commission staff evaluated the various potable water source options for the Columbus Compressor Station, including the installation of a potable water line or construction of a private water well.<sup>124</sup>

90. In response to EPA's comments, Rockies Express confirmed that a one-mile potable water line will be installed.<sup>125</sup> Earnhart Hill Regional Water and Sewer District will construct and operate the non-jurisdictional water line. Rockies Express indicated that construction of this water line would require a 15-foot temporary right-of-way and 1.98 total acres of new disturbance, with part of the water line right-of-way co-located within a proposed access road right-of-way.

91. Because the water line was requested by existing adjacent landowners, would result in landowner access to public water supplies, and would result in only a minor disturbance, we agree with the EA's conclusion that a water line would not result in significant impacts on environmental resources. While the EA noted that a potable water line would potentially provide tie-ins for nearby landowners, sufficient data is not available to determine with any certainty the footprint, location, timing, or resources that might be affected by future tie-ins to the water line. Any future water tie-ins would be initiated by private landowners and subject to applicable state or local permit requirements. Moreover, the Commission has no authority to require mitigation measures on water lines for private landowners.

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<sup>124</sup> See section B.11, EA at 33-34.

<sup>125</sup> Rockies Express indicates that the water line will consist of new water pipe (up to 6 inches in diameter), extending approximately one-mile from the south-east corner of Ett Noecker Road and S. Bloomfield Royalton Road heading north past the Columbus Compressor Station entrance to Highway 752. Rockies Express October 12, 2015 Filing at 5.

i. *Greenhouse Gas Emissions*

92. EPA recommended that the final environmental document commit to implementation of reasonable mitigation measures to reduce or eliminate project-related GHG emissions, describe any such measures (including reasonable alternatives or mitigation opportunities), and estimate the GHG reductions associated with each measure. In the EA, following an evaluation of the cumulative impacts on air quality of Rockies Express's proposed project and four other projects identified in the vicinity,<sup>126</sup> Commission staff determined that no significant cumulative impacts would result.<sup>127</sup> The EA also explained that GHG emissions from construction and operation of the project facilities would contribute less than 0.001 percent of the Ohio and Indiana GHG emission inventories.<sup>128</sup>

93. Rockies Express's new compressor stations will be required to comply with all EPA GHG regulations, including the Mandatory Reporting Rule for GHG emissions. If actual GHG emissions from any of the compressor stations exceed 25,000 metric tons per year of carbon dioxide equivalents, as projected, Rockies Express will be required to report GHG emissions to EPA under the Mandatory Reporting Rule.<sup>129</sup> While GHG emissions from the new compressor stations will represent an incremental increase in GHG emissions, the EA concluded that the project will not contribute significantly to climate change. For these reasons, particularly the finding of no significant environmental impacts, we do not find it necessary to impose mitigation measures.

94. Additionally, EPA recommended that the final environmental document describe best management practices to reduce leakage of methane associated with project operation. Fugitive emissions of methane can occur at a number of points at natural gas compressor stations, including valves, flanges, seals, and gaskets that are not properly fitted. However, fugitive emissions from the proposed facilities are not expected to be

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<sup>126</sup> Table 10: Projects Considered for Cumulative Impacts, EA at 35.

<sup>127</sup> EA at 35-36.

<sup>128</sup> EA at 38.

<sup>129</sup> The EA calculated the maximum amount that each of the proposed and modified compressor stations could emit: 262,751 (Columbus), 180,101 (Washington Court House), 259,462 (Chandlersville), and 180,101 (St. Paul) tons per year of carbon dioxide equivalents. The EA further noted that actual operational emissions may be less. There would be no change in emissions sources at the Hamilton Compressor Station. EA at 23.

substantial. Moreover, industry practices to effectively address methane leakage are still under development. Given this, we do not find the imposition of additional measures to be warranted at this time.

95. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Rockies Express's application and supplements, and in compliance with the environmental conditions in Appendix B to this Order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

96. 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.<sup>130</sup>

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Rockies Express authorizing it to construct and operate the East-to-West Expansion Project, as described and conditioned herein, and as more fully described in the application.

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

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

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<sup>130</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission Sys., L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions in Appendix B to this Order; and

(4) execution, prior to the commencement of construction, of contracts for the firm service volumes equivalent to those reflected in its precedent agreements.

(C) Rockies Express's request to charge its currently-effective reservation and commodity charges for Rate Schedules FTS and ITS as initial rates is approved.

(D) Rockies Express's proposal to charge incremental fuel and electric power charges is approved.

(E) Rockies Express shall file actual tariff records setting forth its fuel and electric power charges for the project in accordance with section 154.207 of the Commission's regulations and other proposed changes to its tariff implementing the project not less than 30 days, and not more than 60 days, prior to placing the project in service.

(F) Rockies Express shall file an executed copy of each non-conforming agreement as part of its tariff, disclosing and reflecting all non-conforming language in the agreement not less than 30 days, and not more than 60 days, prior to the commencement of service on the project.

(G) There will be a presumption of rolled-in rate treatment for the costs and revenues associated with the project in a future NGA section 4 rate case, absent a significant change in material circumstances.

(H) Rockies Express shall maintain separate books and accounting of costs attributable to the proposed project.

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

(J) The untimely motions to intervene filed by Concord Energy LLC, Allegheny Defense Project, Heartwood Alliance, the Ohio Valley Environmental Coalition, and the Freshwater Accountability Project are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**  
**Timely Interventions**

Chevron U.S.A., Inc.  
ConocoPhillips Company  
EQT Energy, LLC  
Independent Oil and Gas Association of West Virginia, Inc.  
Laclede Gas Company  
NJR Energy Services Company  
Range Resources-Appalachia, LLC  
Sequent Energy Management, LP  
Shell Energy North America (US), LP  
Ultra Resources, Inc.

## **Appendix B Environmental Conditions**

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Rockies Express Pipeline, LLC (Rockies Express) 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. Rockies Express 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**, Rockies Express 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 soon as they are available, and before the start of construction**, Rockies Express shall file with the Secretary any revised detailed survey maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-

specific clearances must be written and must reference locations designated on these maps/sheets.

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

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

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Rockies Express shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Rockies Express must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Rockies Express will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
    - b. how Rockies Express will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and

- specifications), and construction drawings so that the mitigation required at the project site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Rockies Express will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Rockies Express's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Rockies Express will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Rockies Express shall employ at least two EIs for the project. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Rockies Express 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 will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Rockies Express'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 EIs 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 Rockies Express from other federal, state, or local permitting agencies concerning instances of noncompliance, and Rockies Express's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Rockies Express shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Rockies Express must receive written authorization from the Director of OEP **before placing the project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the project sites and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Rockies Express shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the conditions in the Order Rockies Express has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Rockies Express shall file a noise survey(s) with the Secretary **no later than 60 days** after placing Washington Court House, Hamilton, St. Paul, and Chandlersville Compressor Stations in service. If a full load condition noise survey is not possible, Rockies Express shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the Washington Court House, Hamilton, St. Paul, and Chandlersville Compressor Stations under interim or full horsepower load conditions exceeds an day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive areas (NSAs), Rockies Express 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. Rockies Express 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.
  
13. Rockies Express shall make all reasonable efforts to ensure its predicted noise levels from the Columbus Compressor Station are not exceeded at nearby NSAs and file full load noise surveys showing this with the Secretary **no later than 60 days** after placing the Columbus Compressor Station in service. If a full load condition noise survey is not possible, Rockies Express shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the Columbus Compressor Station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSA, Rockies Express shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Rockies Express shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.