

154 FERC ¶ 61,161  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

East Tennessee Natural Gas, LLC

Docket No. CP15-91-000

ORDER ISSUING CERTIFICATE

(Issued March 3, 2016)

1. On February 20, 2015, East Tennessee Natural Gas, LLC (East Tennessee) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for a certificate of public convenience and necessity to construct and operate a pipeline extension and related facilities in Monroe and Loudon Counties, Tennessee (Loudon County Expansion Project). As discussed below, the Commission will grant the requested authorization, subject to conditions.

**I. Background and Proposal**

2. East Tennessee, a Tennessee limited liability company,<sup>3</sup> is a natural gas company as defined by NGA section 2(6).<sup>4</sup> East Tennessee's 1,526-mile-long pipeline system extends from Tennessee to Virginia and south to Georgia. The system begins in central Tennessee as two mainlines: the 3100 Line (North Line) and 3200 Line (South Line). The Loudon-Lenoir City Lateral Line 3218D-100 (Loudon-Lenoir City Lateral) connects the two mainlines by extending from the South Line to the North Line through Monroe, Loudon, and Roane Counties, Tennessee. The North and South Lines meet and end near Knoxville, Tennessee.

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

<sup>2</sup> 18 C.F.R. § 157 (2015).

<sup>3</sup> East Tennessee is an indirect, wholly owned subsidiary of Spectra Energy Partners, L.P.

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

3. East Tennessee proposes to construct and operate pipeline and related facilities to provide up to 40,000 dekatherms (Dth) per day of firm transportation service to Tate & Lyle Ingredients Americas, LLC's (Tate & Lyle) manufacturing plant in Loudon County.<sup>5</sup> Specifically, East Tennessee proposes:

- an approximately 10.2-mile-long, 12-inch-diameter mainline extension (Loudon Mainline Extension), with a crossover to the existing Loudon-Lenoir City Lateral, and related appurtenant facilities, in Monroe and Loudon Counties. The proposed pipeline will parallel the Loudon-Lenoir City Lateral for most of its route from the South Line to the Tate & Lyle manufacturing plant;
- a new meter station and related appurtenances located at the end of the proposed Loudon Mainline Extension at the Tate & Lyle manufacturing plant;
- a pressure regulator at existing Meter Station 59039 on the existing Loudon-Lenoir City Lateral in Loudon County; and
- a 12-inch mainline valve, two 12-inch Tee Taps, and related appurtenances at the interconnection of the Loudon Mainline Extension with the 12-inch diameter South Line near milepost (MP) 234.35 in Monroe County.

4. East Tennessee held binding open and reverse open seasons for the Loudon County Expansion Project from September 15 through October 3, 2014. No shippers offered to turn back existing capacity. Following the open seasons, on February 13, 2015, East Tennessee and Tate & Lyle executed a precedent agreement for 40,000 Dth per day of new firm transportation service for a primary term of 20 years.

5. East Tennessee estimates the cost of the Loudon County Expansion Project to be approximately \$53 million. East Tennessee proposes to establish an initial incremental recourse rate under Rate Schedule FT-A to recover project costs. Tate & Lyle has elected to pay a negotiated rate.

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<sup>5</sup> Tate & Lyle is a manufacturer of artificial sweeteners and ethanol products. Tate & Lyle plans to convert its existing coal-fired boilers to back-up natural gas-fired boilers and install two natural gas-fired co-generation units.

## II. Notice and Interventions

6. Notice of East Tennessee's application was published in the *Federal Register* on March 6, 2015.<sup>6</sup> The parties listed in Appendix A filed timely, unopposed motions to intervene.<sup>7</sup>

7. The Commission received comments from landowners concerned about the pipeline routes and associated environmental impacts. These commenters are identified in Appendix B to this order. Their comments are discussed below or in the proposed project's Environmental Assessment (EA).

## III. Discussion

8. 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>8</sup>

### A. Application of the Certificate Policy Statement

9. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>9</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of major new 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.

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<sup>6</sup> 80 Fed. Reg. 12,160 (2015).

<sup>7</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2015).

<sup>8</sup> 15 U.S.C. §§ 717f(c) and (e) (2012).

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

10. 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.

### **1. Subsidization**

11. East Tennessee's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. In general, when a pipeline proposes an incremental rate for a proposed project's service that is higher than the generally applicable system rate, the pipeline satisfies the no subsidization requirement.<sup>10</sup> As discussed in the rate section below, East Tennessee will provide the expansion service under an incremental recourse rate which is higher than the generally applicable system rate.

### **2. Existing Customers and Other Pipelines and Their Customers**

12. The Loudon County Expansion Project will not degrade service to its existing customers. There is nothing in the record to suggest that East Tennessee's customers will experience any degradation in service and no existing customers filed adverse comments on East Tennessee's proposal.

13. The proposed project will not adversely affect other pipelines in the area or their captive customers. There are no other natural gas pipelines in the area and the proposal is not designed to replace service on other pipelines. Also, no pipeline company or their captive customers have filed adverse comments to East Tennessee's proposal.

### **3. Landowners and Communities**

14. East Tennessee has routed the Loudon County Expansion Project to minimize impacts to landowners and communities. Of the proposed project's 10.2 miles of pipeline, 6.7 miles parallel the existing rights-of-way of Highway 72 or the existing

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<sup>10</sup> *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

Loudon-Lenoir City Lateral. One affected landowner opposed the proposed route and suggested that all new construction be collocated with the existing Loudon-Lenoir City Lateral. As discussed in the EA, that route, as well as several other alternative routes, either impacted more residential areas or were not environmentally preferable to the proposed route. Moreover, since that filing, East Tennessee has negotiated necessary easement agreements with landowners along the proposed pipeline route. Thus, we find that East Tennessee has designed the project to minimize adverse effects on landowners and nearby communities.

15. The proposals herein will enable East Tennessee to provide the firm transportation service requested by Tate & Lyle. Based on the benefits the project will provide to Tate & Lyle, the lack of adverse effects on existing customers, other pipelines and their captive customers, and the minimal adverse effects on landowners or communities, the Commission finds, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of East Tennessee's proposed Loudon County Expansion Project, as conditioned in this order.

## **B. Rates**

### **1. Initial Recourse Rates**

16. East Tennessee proposes an initial incremental recourse rate for firm transportation service under Rate Schedule FT-A, consisting of a monthly reservation rate of \$21.455 per Dth<sup>11</sup> and a usage charge of \$0.000 per Dth.<sup>12</sup> East Tennessee states that it will maintain a separate record of capital costs for the project in its books and accounts.

17. It is appropriate to charge an incremental recourse rate for a pipeline expansion when the incremental rate is higher than the existing system rate. In this case, the incremental rate of \$21.455 per Dth exceeds the existing applicable general system rate of \$6.680 per Dth. Thus, we approve East Tennessee's proposal to charge an incremental rate for the Loudon County Expansion Project.

18. To ensure that project costs are properly allocated, the Commission directs East Tennessee to keep separate books and accounting of costs attributable to the Loudon County Expansion Project. The books should be maintained with applicable cross-

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<sup>11</sup> East Tennessee calculated its proposed monthly reservation rate by dividing the annual incremental cost of service of \$10,298,220 by the annual design capacity of 480,000 Dth (the daily 40,000 Dth per day multiplied by 12 months).

<sup>12</sup> No variable costs are associated with the Loudon County Expansion Project.

references as required by section 154.309 of the Commission's regulations.<sup>13</sup> This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceedings and the information must be provided consistent with Order No. 710.<sup>14</sup>

19. East Tennessee did not propose an initial interruptible transportation rate for service provided by the incremental capacity. Commission policy requires a pipeline to use its current system IT rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.<sup>15</sup> Accordingly, East Tennessee is directed to charge its current system IT rate as the IT recourse rate.

## 2. Negotiated Rates

20. Tate & Lyle has agreed to receive service at a negotiated rate. East Tennessee must file its negotiated rate agreement or tariff record describing the negotiated rate agreement associated with this project in accordance with the Alternative Rate Policy Statement<sup>16</sup> and the Commission's negotiated rate policies<sup>17</sup> at least 30 days, but not more than 60 days, before the proposed effective date for such rates.<sup>18</sup>

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<sup>13</sup> 18 C.F.R. § 154.309 (2015).

<sup>14</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

<sup>15</sup> *See, e.g., Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010); *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 313-14 & 326 (2006).

<sup>16</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>17</sup> *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>18</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.

### 3. Incremental Shrinkage Factor

21. East Tennessee proposes an incremental shrinkage factor of 0.60 percent, which is its current lost and unaccounted for (LAUF) rate for system customers. The Commission has previously approved East Tennessee charging only the LAUF rate when there is no incremental fuel use.<sup>19</sup> East Tennessee verifies that the Loudon County Expansion Project does not include the installation or modification of any compressor stations.<sup>20</sup> Furthermore, the proposed project's gas flow from its primary receipt point to its primary delivery point is in the opposite direction of the mainline system design, so there is no incremental use of compressor fuel. Thus, the Commission approves East Tennessee's proposed initial shrinkage charge of 0.60 percent for the backhaul transportation service.

### IV. Environmental Analysis

22. On March 24, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). On July 10, 2015, East Tennessee supplemented its application and modified its original route to reduce impacts to affected landowners and environmentally sensitive areas. On July 28, 2015, the Commission issued a Supplemental NOI. The NOI and Supplemental NOI were published in the *Federal Register*<sup>21</sup> and mailed to interested parties, including federal, state, and local officials; agency representatives; environmental and other conservation organizations; Native American tribes; local libraries and newspapers; and property owners potentially affected by the proposed project.

23. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>22</sup> Commission staff, with the cooperation of the Tennessee Valley Authority (TVA), prepared an EA for the proposed project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA addresses all substantive comments received in response to the NOI. The Commission did not receive any comments in response to the Supplemental NOI.

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<sup>19</sup> *East Tennessee Natural Gas, LLC*, 146 FERC ¶ 61,174, at P 21 (2014).

<sup>20</sup> East Tennessee May 5, 2015 Data Response at 5.

<sup>21</sup> 80 Fed. Reg. 16,662 (2015); 80 Fed. Reg. 46,266 (2015).

<sup>22</sup> 42 U.S.C. §§ 4321 *et. seq.* (2012).

24. The EA was issued for a 30-day comment period on December 28, 2015. The Commission received comments from the U.S. Fish and Wildlife Service (USFWS) and East Tennessee. As discussed in more detail below, each commented on the proposed horizontal directional drilling (HDD) water crossing mitigation measures.

**A. HDD Water Crossing Mitigation Measures**

25. East Tennessee proposes to use HDD to install facilities under three waterways: HDD 1 will drill under two sections of Tellico Lake and a tributary to Bat Creek; HDD 2 will drill under a third section of Tellico Lake; and HDD 3 will drill under the Tennessee River. The EA found that the HDD construction had a higher than average probability of an inadvertent release of drilling fluid into Tellico Lake and the Tennessee River. As discussed in the EA, the results of a geotechnical investigation and feasibility analysis indicate that the HDD entry and exit locations would pass through carbonate bedrock pocketed with dissolution voids.<sup>23</sup> Drilling fluid from the borehole could then travel through these voids into waterbodies to negatively impact fisheries and aquatic vegetation.

26. To address this risk, Commission staff included in the EA recommendations 13 and 15. EA recommendation 13 directed East Tennessee to file a revised *HDD Inadvertent Returns Plan*. The plan would require specific measures, including the use of temporary surface casing at each of the HDD borehole entry and exit locations to reduce the chance for an inadvertent release of drilling mud into waterbodies. The plan would also need to include the proper federal agency contacts to be notified in the event of an inadvertent release of drilling fluid. EA recommendation 15 required East Tennessee to construct the HDDs across Tellico Lake and the Tennessee River between July 1 and November 30, 2016, when water levels are generally highest, to minimize impacts on federally listed aquatic species and to avoid sensitive spawning and fish stocking periods.

27. USFWS agreed with these recommendations, stating that these specific mitigation measures are necessary for it to concur, pursuant to the Endangered Species Act, with the Commission staff's determination that the HDD construction is not likely to adversely affect eight federally listed aquatic species in the area.

28. East Tennessee, however, requested changes to both recommendations. As discussed below, the Commission will adopt East Tennessee's requests with modifications. With regard to USFWS comments, we will require USFWS concurrence

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<sup>23</sup> The majority of these dissolution voids are minor (0.1 to 0.6 feet in length). See EA at 40-41 (citing East Tennessee September 30, 2015 Supplemental Information Filing: Hatch Mott MacDonald's Geotechnical Investigations and Feasibility Report Loudon Expansion Project HDD Crossings).

that the project modifications discussed below are not likely to adversely affect federally listed species before East Tennessee may begin construction. This requirement has been included as Environmental Condition 18 in Appendix C of this order.

**1. EA Recommendation 13**

29. East Tennessee objected to the required use of temporary surface casing at the HDD borehole entry and exit locations in EA recommendation 13. According to East Tennessee, to comply with this requirement, it would have to use a drill and intersect approach.<sup>24</sup> East Tennessee asserts that this approach increases the complexity and risk of the HDD crossing process, as this construction method requires the precise intersection of the pilot bores from either side of the crossing. East Tennessee also contends that larger diameter pilot holes at the entrance and exit locations would be needed to install the temporary casing, which would in turn generate larger volumes of drilling fluid, potentially increasing the chances for drilling fluid loss. East Tennessee also states that larger workspaces would be needed for the second HDD drilling rig at each crossing.

30. As an alternative mitigation measure, East Tennessee proposes to add an industry-accepted xanthan gum-based polymer<sup>25</sup> to the HDD drilling fluid. According to East Tennessee, xanthan gum-based polymers provide an efficient suspension and transport mechanism for cuttings removal and reduce the risk of fluid migration to surface waters without negatively impacting the consistency of the drilling fluid. Based on the manufacturer's recommendations, East Tennessee estimates that it would use 4,000 pounds of the polymer for the three HDD crossings, although East Tennessee notes that polymer concentrations may need to be adjusted to accommodate conditions encountered while drilling.<sup>26</sup>

31. East Tennessee states that it would carefully monitor the drilling fluid pressure, consistency, and returns throughout the HDD operation. In the event of an inadvertent release of drilling fluid, East Tennessee states that the HDD would be halted to determine how best to proceed. East Tennessee states that if a reduction in the pumping rate of the drilling fluid, adjustment of the polymer, or the addition of grouting material to repair

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<sup>24</sup> During the drill and intersect approach, two drilling rigs, one on each side of a waterbody crossing, drill pilot holes at the same time and eventually meet underground. *See* January 28, 2016 Memo at 2; East Tennessee January 27, 2016 Comments on the Environmental Assessment (EA Comments) at 2-3.

<sup>25</sup> Xanthan gum is a plant-based product composed of sugar residues that is used to thicken and stabilize liquids, and is commonly used as a thickening agent in drilling mud.

<sup>26</sup> EA Comments at 3.

fissures does not stop the inadvertent release of drilling fluid, it would install temporary conductor casing to prevent further drilling fluid losses prior to resuming the HDD.

32. We agree that East Tennessee's use of the xanthan gum-based polymer is an acceptable alternative to surface casing. The xanthan gum-based polymer will thicken the drilling fluid to reduce the drilling fluid's flow through the minor dissolution voids and prevent the inadvertent release of drilling fluids into surrounding waterbodies. Thus, Environmental Condition 13 in Appendix C of this order requires the use of xanthan gum-based polymer.

33. However, in light of this change, we will require additional monitoring measures during the HDD operation. East Tennessee's *HDD Inadvertent Returns Plan*<sup>27</sup> includes a provision for notifying "appropriate permit authorities as necessary of [an inadvertent return], [the] proposed response, and . . . required documentation within 24 hours," but the type of documentation to be provided to appropriate permit authorities is not specified. East Tennessee also proposes a contingency plan to install temporary conductor casing in the event that the proposed alternative methods to stop the inadvertent release of drilling fluid fail, but does not specify how it would monitor field conditions (such as the volume and drilled interval where fluid losses cannot be controlled) or how it would determine when it must install temporary conductor casing. Accordingly, we will require that East Tennessee revise its plan to include detailed reporting specifications to enable the appropriate permitting authorities to determine at what point East Tennessee's proposed method has failed to stop an inadvertent release of drilling fluid and require conductor casing installation. These requirements have been included in Environmental Condition 13 in Appendix C of this order.

34. We will also require that East Tennessee file a *Polymer Use and Handling Plan*. The material safety data sheet provided for the particular brand of xanthan gum polymer proposed by East Tennessee indicates that the product in its bulk powder form should not be released into waterbodies. East Tennessee, which has agreed to follow the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), would treat the xanthan gum polymer as any other hazardous material and not store the product in its bulk powder form within 100 feet of a wetland or waterbody. However, because neither the xanthan gum-based polymer nor its proper handling were addressed in the EA, we will require, as a part of the above referenced Environmental Condition 13, that East Tennessee file a *Polymer Use and Handling Plan* regarding the proper handling and storage of the polymer during project activities.

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<sup>27</sup> EA at Appendix C, Best Drilling Practices, Monitoring and Clean-up of Horizontal Directional Drilling Inadvertent Returns for the Loudon Expansion Project.

## 2. EA Recommendation 15

35. East Tennessee also proposed changes to EA recommendation 15, regarding the timing of the HDD crossings. As stated in the EA, the purpose of the recommendation was to ensure: (1) the protection of federally endangered aquatic species and Tennessee Wildlife Resource Agency (TWRA) spring stocking and fish spawning periods; and (2) that the maximum amount of water would be present behind the Tellico and Watts Bar Reservoirs to provide downward pressure on the underground karst geology to help prevent the inadvertent release of drilling fluids into the overlying waterbody.<sup>28</sup>

36. East Tennessee claims this timing window would not allow it to complete construction of the HDD 1 crossing of Tellico Lake, which it estimates would take 83 days. East Tennessee requests that it be allowed to begin construction as early as April 1, 2016. To support its request for earlier construction, East Tennessee provided five years (2011 to 2015) of TVA water level data for the Tellico and Watts Bar Dams that show water levels peaking between May and November.<sup>29</sup> East Tennessee also provided a letter from the TWRA, which concurred with the a release of the timing restriction for the HDD 1 crossing, but not the HDD 2 and 3 crossings due to potential impacts to aquatic species.<sup>30</sup>

37. Given the input from the TWRA and East Tennessee's showing that water levels are typically at their peak between May and November, we will revise the allowed crossing dates for HDD 1 to between May 1 and November 30, 2016. We will continue to require that the HDD 2 and HDD 3 crossings occur between the July 1 and November 30, 2016. These requirements have been included in Environmental Condition 15 in Appendix C of this order.

38. Environmental Condition 17 has been revised to include a reporting requirement to ensure that East Tennessee meets noise levels at the HDD 1 entry point and the HDD 2 entry and exit points, as predicted in its noise analysis.<sup>31</sup>

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<sup>28</sup> EA at 63.

<sup>29</sup> EA Comments at Attachment B, Water Level Tables for Tellico Lake and Tennessee River.

<sup>30</sup> *Id.* at Attachment B, TWRA Response to East Tennessee for Time-of-Year Restriction Release.

<sup>31</sup> See East Tennessee April 14, 2015 Supplemental Information: Hoover & Keith, *Acoustical Assessment of the HDDs and new Tate & Lyle Meter Station for the Project (Monroe County and Loudon County, Tennessee)*.

39. We have reviewed the information and analyses contained in the EA and augmented by the revisions discussed above. We find that if operated in accordance with East Tennessee's application, as supplemented, and in compliance with the environmental conditions in Appendix C to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

40. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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>32</sup>

41. 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 herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to East Tennessee authorizing the construction and operation of the Loudon County Expansion Project, as described and conditioned herein, and as more fully described in the application.

(B) East Tennessee's initial incremental recourse rates for firm transportation service under Rate Schedule FT-A are approved, as more fully discussed above.

(C) East Tennessee is required to use its current system IT rate for the Loudon County Expansion Project, as discussed further above.

(D) East Tennessee shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

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<sup>32</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 they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) East Tennessee shall file actual tariff records no earlier than 60 days, and no later than 30 days, prior to the date project facilities go into service.

(F) Prior to commencement of construction, East Tennessee must execute contracts for service at levels and under terms and conditions equivalent to those which it represented were subscribed under the precedent agreement.

(G) The certificates issued herein are conditioned on East Tennessee's compliance with the environmental conditions set forth in Appendix C to this order and all of the applicable regulations under the NGA 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.

(H) The facilities authorized here shall be constructed and made available for service within two years of the date of the order in this proceeding, as required by section 157.20(b) of the Commission's regulations.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

**Intervenors**

Andrew E. Hackney

Atmos Energy Corporation

Atmos Energy Marketing, LLC

Chattanooga Gas Company

East Tennessee Group<sup>33</sup>

Karen Robinson Hunt Hackney

Piedmont Natural Gas Company, Inc.

Public Service Company of North Carolina

Tate & Lyle Ingredients Americas, LLC

Tennessee Valley Authority

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<sup>33</sup> The East Tennessee Group (ETG) is an ad hoc, voluntary association of jurisdictional customers of East Tennessee, each of which is engaged in the distribution of natural gas at retail.

**Appendix B**  
**Commenters**

Al Barry Duckett

Christopher Mueller

Clyde H. Thomas

Daniel W. and Kitty A. Sexton

Mark E. Hudson

Nicholas Hoad

Richard Carver

Susan Poston Marler

Tennessee Historical Commission

## Appendix C

### Environmental Conditions

As recommended in the EA and modified herein, this authorization includes the following conditions:

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

locations designated on these alignment maps/sheets. East Tennessee's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. East Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the authorization and before construction** begins, East Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. East Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how East Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;

- b. how East Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions East Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - f. the company personnel (if known) and specific portion of East Tennessee's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) East Tennessee will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the environmental compliance training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. East Tennessee shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, East Tennessee shall file updated status reports with the Secretary on a **weekly 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 East Tennessee's efforts to obtain the necessary federal authorizations;
- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
- c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
- e. the effectiveness of all corrective actions implemented;
- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
- g. copies of any correspondence received by East Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and East Tennessee's response.

9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, East Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. East Tennessee must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, East Tennessee 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 this Order East Tennessee has complied with or will comply with. This statement shall also identify any

areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. **Prior to construction**, East Tennessee shall file with the Secretary, for review and written approval by the Director of OEP, a *Karst Investigation Report*. East Tennessee shall develop the *Karst Investigation Report* showing the results of a detailed evaluation and the remediation strategy for each of the six sinkholes (Feature IDs LE-5, LE-6, LE-14, LE-16, LE-29, and LE-33) that will be directly adjacent to or below the trench line. East Tennessee's evaluation shall define the dimensions of each feature using a combination of surface geophysical techniques, geotechnical borings, and excavation to expose the throat of the solution opening.

13. **Prior to construction**, East Tennessee shall file with the Secretary, for review and written approval by the Director of OEP, a revised *HDD Inadvertent Returns Plan*. The revised plan shall:

- a. provide for the use of the xanthan gum-based polymer throughout the entire length of each HDD to account the project area's karstic zones in the bedrock (per the results of the geotechnical boring logs) to reduce the likelihood of an inadvertent release of drilling mud into Tellico Lake and the Tennessee River;
- b. include a *Polymer Use and Handling Plan* describing the proper handling and storage of the xanthan gum polymer and that the measures adhere to the Commission's Procedures;
- c. provide detailed report specifications on drilling fluid losses; and
- d. include the following federal agency contacts to be notified in the event of an inadvertent release of drilling fluid: Mark McIntosh at the U.S. Army Corps of Engineers, Nashville District, Regulatory Branch (865-986-7296) and the Tennessee Valley Authority River Forecast Center (865-632-6065).

14. **Within 30 days of placing the facilities in service**, East Tennessee shall file a report with the Secretary identifying any water supply wells/systems damaged by construction and how they were repaired or replaced. The report shall also include a discussion of any other complaints concerning well yield or water quality and how each problem was resolved.

15. East Tennessee shall conduct construction of the HDD 1 **between May 1 and November 30**, and shall conduct construction of the HDD 2 and HDD 3 crossing **between July 1 and November 30**.

16. **Prior to construction**, East Tennessee shall file with the Secretary the appropriate TVA approval documentation for the project segment on TVA jurisdictional land.

17. East Tennessee shall employ the noise mitigation measures described in its noise analysis at the HDD 1 entry point and the HDD 2 entry and exit points to the predicted levels and provide documentation in its weekly status reports that those noise level thresholds are not exceeded.

18. East Tennessee shall not begin construction of the project **until**:

- a. FERC staff completes any necessary consultation with the FWS for federally listed species; and
- b. East Tennessee has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.