

155 FERC ¶ 61,115  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

UGI Sunbury, LLC

Docket No. CP15-525-000

ORDER ISSUING CERTIFICATE

(Issued April 29, 2016)

1. On July 1, 2015, UGI Sunbury, LLC (Sunbury) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for certificate authorization to construct and operate its Sunbury Pipeline Project to provide new service to a new electric generation facility and to local gas distribution markets in central Pennsylvania. Sunbury also requests a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations to engage in certain construction and abandonment activities, and a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations to provide open-access transportation services and approval of its pro forma tariff.<sup>3</sup> For the reasons discussed below, the Commission will grant the requested authorizations, subject to appropriate conditions.

**I. Background and Proposal**

2. Sunbury, a Delaware limited liability company, is a direct, wholly-owned subsidiary of UGI Energy Services, Inc. (UGI Energy) and an indirect, wholly-owned subsidiary of UGI Corporation, a publicly traded international energy company. Sunbury is authorized to conduct business in Pennsylvania.

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

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

<sup>3</sup> 18 C.F.R. pt. 157, Subpart F and pt. 284, Subpart G (2015).

3. Sunbury does not currently own or operate any interstate pipeline facilities or provide any services subject to the Commission's jurisdiction. Sunbury proposes to construct and operate the Sunbury Pipeline Project to provide 200,000 dekatherms (Dth) per day of firm natural gas transportation service for Hummel Station, LLC (Hummel) to the Hummel Station Generating Facility (Hummel Station), a new electric generation plant being developed in Snyder County, Pennsylvania,<sup>4</sup> and for UGI Energy to proposed interconnections with the local distribution systems of UGI Penn Natural Gas (UGI Penn) and UGI Central Penn Gas (UGI Central Penn). Sunbury proposes receipt point interconnections with the interstate pipeline systems of Transcontinental Gas Pipe Line Company (Transco) and the MARC I Pipeline (MARC I)<sup>5</sup> at the northern terminus of the proposed route. No compression is proposed as part of this project.

4. Specifically, Sunbury proposes to construct and operate the following facilities in Pennsylvania:

- a. approximately 34.4 miles of 20-inch-diameter pipeline with associated measurement and regulation, pig launching and receiving equipment, and other ancillary facilities in Snyder, Union, Northumberland, Montour, and Lycoming Counties;
- b. one integrated receiving station, at the northern terminus of the pipeline route, containing two receipt point interconnections, with Transco and MARC I, in Franklin Township, Lycoming County;
- c. the UGI Central Penn Delivery Station and 6-inch-diameter, 965-foot lateral pipeline at milepost 24.0 in Northumberland County;
- d. the UGI Penn Delivery Station and mainline valve near milepost 30 in Northumberland County; and
- e. the Hummel Station Delivery Station/Receiver at the southern terminus of the pipeline in Snyder County.

5. Equipment at each meter station would include supply, discharge and emergency bypass lines, meter runs, pressure regulation and overpressure protection equipment, gas heaters, and control buildings. Sunbury's proposed pipeline would have a design

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<sup>4</sup> The Hummel Station will be an approximately 1,000 megawatt (MW) natural-gas fired electric generation facility at the site of a coal-fired plant, which Sunbury Generation LP has retired from operation. The Hummel Station is expected to begin commercial operations in the second half of 2017.

<sup>5</sup> The MARC 1 Pipeline is part of the interstate Stagecoach Pipeline System, operated by Central New York Oil and Gas Company, LLC.

capacity sufficient to provide 200,000 Dth per day of firm transportation service and would operate at a maximum allowable operating pressure (MAOP) of 1,480 pounds per square inch (psig).<sup>6</sup> Sunbury estimates the project will cost \$178.2 million.

6. Sunbury proposes to provide firm and interruptible transportation services on an open-access, nondiscriminatory basis in accordance with Part 284 of the Commission's regulations and the terms and conditions of its proposed tariff. Sunbury requests approval of its pro forma tariff and proposed initial recourse rates for firm and interruptible transportation service. Sunbury also seeks authority to enter into negotiated rate agreements.

7. Sunbury held a binding open season from January 7 through January 16, 2015. Sunbury received binding bids for 180,000 Dth per day of firm transportation service from Hummel and for 20,000 Dth per day of firm transportation service from UGI Energy. Hummel's and UGI Energy's bids and binding precedent agreements represent 100 percent of the proposed capacity. Hummel's agreement is for a 30-year term for firm transportation service under proposed Rate Schedule FT (Foundation Shipper status); UGI Energy's FT service agreement is for a 15-year term (Anchor Shipper status).<sup>7</sup> Hummel has elected to pay a negotiated rate. UGI Energy will pay the recourse rate for FT service.

8. Sunbury also requests a Part 284, Subpart G blanket certificate to provide open-access transportation services subject to open-access regulations and a Part 157, Subpart F blanket certificate, which provides authorization for the construction, operation, and abandonment of eligible facilities subject to the conditions set forth in the blanket certificate regulations.

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

9. Notice of Sunbury's application was published in the *Federal Register* on July 21, 2015, with motions to intervene, comments, and protests due on August 5, 2015.<sup>8</sup> The

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<sup>6</sup> Application at 6.

<sup>7</sup> In the open season, Sunbury offered bidders the opportunity to become "Foundation Shippers" or "Anchor Shippers," which are eligible for certain rate-related benefits and protection against pro-rationing. To be a Foundation Shipper, a bidder had to request a maximum daily quantity (MDQ) of at least 180,000 Dth per day for a minimum initial term of at least 30 years. To be an Anchor Shipper, a bidder had to request an MDQ of at least 20,000 Dth per day for a minimum term of at least 15 years. Application at 8.

<sup>8</sup> 80 Fed. Reg. 43,080 (2015).

UGI Distribution Companies<sup>9</sup> filed a timely, unopposed motion to intervene.<sup>10</sup> David B. Gray and Annette T. Gray filed a late intervention. We find that the Grays have shown an interest in the proceeding, and that granting late intervention will not disrupt the proceedings or burden existing parties.<sup>11</sup> Therefore, we will grant the late motion to intervene.

10. Twenty-nine comments were filed in support of the Sunbury Pipeline Project. These commenters state the project is needed to deliver natural gas for use as fuel in electric generation and to meet growing demand for local distribution to residential, commercial, and industrial gas consumers in Pennsylvania.<sup>12</sup> The concerns of two commenters that opposed the proposed project route are addressed in the Environmental Assessment and in the environmental section below.

### **III. Discussion**

11. Since Sunbury's proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>13</sup>

#### **A. Certificate Policy Statement**

12. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.<sup>14</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and

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<sup>9</sup> The UGI Distribution Companies comprise UGI Utilities, Inc., and its wholly owned subsidiaries, UGI Penn and UGI Central Penn.

<sup>10</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(c) (2015).

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

<sup>12</sup> See, e.g., Comments filed on August 3, 2015 by the UGI Distribution Companies comprised of UGI Utilities, Inc. ("UGIU"), and its wholly owned subsidiaries UGI Penn and UGI Central Penn.

<sup>13</sup> 15 U.S.C. §§ 717f(c) and (e) (2012).

<sup>14</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).

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.

13. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new facilities. 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.

14. As stated above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Since Sunbury is a new company without existing customers, there is no possibility of subsidization by existing customers.<sup>15</sup>

15. We also find that there will be no adverse impact on other existing pipelines in the region or their captive customers. Sunbury's proposal is designed to meet the needs of two shippers, Hummel and UGI Energy, which have entered into agreements for the full design capacity of the proposed pipeline facilities. The Sunbury Pipeline Project will serve the natural gas needs of the Hummel Station that will provide needed electric generation capacity to the region, replacing a coal-fired generating facility that is no longer in service. The firm transportation service for UGI Energy will provide its local distribution affiliates with access to new supply sources for their central Pennsylvania operations and enhance their capability to serve new customers. Furthermore, no other pipelines or their customers filed protests or adverse comments.

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<sup>15</sup> Certificate Policy Statement, 88 FERC at 61,746.

16. Sunbury's proposed project will also have minimal adverse impacts on landowners and communities. Sunbury considered the existing land use, population areas, and environmental conditions in locating its proposed pipeline. As further discussed below, Sunbury has made various route adjustments designed to minimize impacts on landowners, and communities.<sup>16</sup>

17. In view of the considerations above, the proposed project will have the benefits of providing needed natural gas transportation services with no adverse effects on other pipelines' captive customers and minimal economic impacts on landowners and surrounding communities. Therefore, we find that the proposal satisfies the Certificate Policy Statement's criteria. Based on this finding and our environmental review, discussed below, we find that approval of Sunbury's proposal is required by the public convenience and necessity, subject to the environmental and other conditions discussed in this order.

## **B. Blanket Certificates**

18. We will also grant Sunbury's request for issuance of a Part 157, Subpart F blanket construction certificate and a Part 284, Subpart G blanket transportation certificate. A Part 157 blanket certificate gives an interstate pipeline authority automatically, or after prior notice, to construct, acquire, or abandon eligible pipeline facilities subject to the blanket certificate regulations' costs limits and environmental conditions. A Part 284, Subpart G blanket certificate provides self-implementing authority for an interstate pipeline to provide and abandon transportation services subject to the conditions set forth in the Commission's open-access regulations.

## **C. Rates**

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

19. Sunbury proposes to provide firm transportation (Rate Schedule FT) and interruptible transportation (Rate Schedule IT) under Part 284 of the Commission's regulations at cost-based recourse rates and requests authority to offer service at negotiated rates. Sunbury also proposes to offer a Firm Transportation Enhancement Service (FTES) for shippers receiving long-term service under Rate Schedule FT to receive additional firm service on a priority basis when capacity is available.

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<sup>16</sup> As further discussed in the environmental section below, Sunbury examined fifty-six route variations based on input from stakeholders and affected landowners during the pre-filing review and scoping period. *See* December 28, 2015 Environmental Assessment at 114.

20. Sunbury developed its proposed recourse rate for firm service using its pipeline's design capability of 200,000 Dth per day and a straight fixed-variable (SFV) cost classification based on a first year cost of service of \$34,950,590. Sunbury proposes a capital structure of 60 percent equity and 40 percent debt. The proposed cost of service is based on a return on equity of 14 percent, a cost of debt of 7 percent, and a blended depreciation rate of 2.54 percent which assumes a 40-year useful life for the pipeline and a 25-year useful life for the ultrasonic meter facilities.

21. For firm service under Rate Schedule FT, Sunbury proposes a maximum recourse reservation charge of \$14.5627 per Dth per month and a commodity charge of \$0.0000 per Dth per month. For both interruptible service under Rate Schedule IT and FTES service under Rate Schedule FT, Sunbury proposes a maximum rate of \$0.4788 per Dth per day based on 100 percent load factor of its design capacity.

22. For authorized overrun service, the rate would be \$0.4788 per Dth per day; for unauthorized overrun service during non-critical periods, the rate would be \$0.5788 per Dth per day (the IT rate of \$0.4788 plus a \$0.1000 per Dth per day penalty). During critical periods, the rate for unauthorized overrun service would be \$0.9576 per Dth per day (twice the IT rate). The hourly rates for authorized and unauthorized overrun services are 1/24th of the daily rates.<sup>17</sup>

23. The Commission has reviewed Sunbury's proposed cost of service and initial recourse rates, and finds that they are generally appropriate and consistent with Commission policy. However, with respect to the use of 60 percent equity and 40 percent debt capital structure in calculating the proposed rates, we note the Commission has explained in *MarkWest Pioneer, L.L.C.*<sup>18</sup> that use of a capitalization containing such a large equity ratio is more costly to ratepayers, because equity financing is typically more costly than debt financing, and also because the interest indebtedness is tax deductible. Therefore, although the Commission approved MarkWest's proposed 14 percent return on equity, it required MarkWest to design its cost-based rates on a capital structure that included at least 50 percent debt. Similarly, we will approve Sunbury's proposed 14

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<sup>17</sup> In its August 28, 2015 Response to a staff data request, Sunbury explained that its application's stated hourly rate of \$0.0478 per Dth/hr for unauthorized overrun service during critical periods was a miscalculation, and that the correct hourly overrun rate during critical periods is \$0.0399 per Dth/hr (1/24th of the of the daily rate of \$0.9576 per Dth per day).

<sup>18</sup> 125 FERC ¶ 61,165, at P 27 (2008) (*MarkWest*) (rejecting MarkWest's proposed capital structure of 60 percent equity and 40 percent debt for its greenfield pipeline project).

percent return on equity, but require that it recalculate its cost of service and initial recourse rates using a capital structure that includes at least 50 percent debt.<sup>19</sup>

## 2. Fuel

24. Sunbury proposes an initial fuel retainage rate of 0.0 percent since there is no compression proposed as part of the Sunbury Pipeline Project. Sunbury has established a lost and unaccounted-for gas percentage of 0.25 percent.

25. Sunbury's pipeline will have no compression or other facilities using gas as a fuel, and Sunbury will install ultrasonic meters. Therefore, the Commission finds Sunbury's proposed initial fuel retainage of 0.0 percent and lost and unaccounted-for gas percentage of 0.25 percent are reasonable and consistent with Commission precedent.<sup>20</sup> We note that changes to fuel and lost and unaccounted-for gas retention rates are typically made in proceedings initiated by pipelines making limited NGA section 4 filings where parties have an opportunity to examine the data used to derive the projected fuel rate and review the reconciliation data. Shippers may dispute the fuel and lost and unaccounted-for gas quantities and any adjustments when Sunbury files its annual fuel and lost and unaccounted-for gas adjustment mechanism filing pursuant to General Terms and Conditions (GT&C) Section 13.3 of its pro forma tariff.

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<sup>19</sup> See *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 24 (2010) (*Bison*) (finding that Bison's proposed 14 percent return on equity was acceptable because Bison was a new company constructing a greenfield pipeline project, and its proposed capital structure (50 percent equity/50 percent debt) did not include an equity component that exceeded 50 percent).

<sup>20</sup> *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192, at PP 43-44 (2014) (*Sierrita*). Like Sunbury's proposed pipeline system, Sierrita's 60.9-mile-long system would have no compression or other facilities using gas as fuel. The Commission therefore did not approve a fuel retainage rate for Sierrita. Also like Sunbury's system, Sierrita's system would employ ultrasonic meters. Because the ultrasonic meters would be designed, calibrated and installed to industry accepted standards with an expected uncertainty of at least +/- 0.25 percent, the Commission approved an initial 0.25 percent retainage rate for lost and unaccounted for gas for Sierrita's system.

### 3. Rate Changes and Three-Year Filing Requirements

26. Consistent with Commission precedent, Sunbury is required to file a cost and revenue study at the end of its first three years of jurisdictional service to justify its initial cost-based firm and interruptible recourse rates.<sup>21</sup> In its filing, the projected units of service should be no lower than those upon which Sunbury's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.<sup>22</sup>

27. Sunbury's study should be filed through the eTariff portal using the Type of Filing Code 580. In addition, Sunbury is advised to include, as part of the eFiling, Filing Title/Description, a reference to Docket No. CP15-525-000, and the cost and revenue study.<sup>23</sup> After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of filing a cost of service study, Sunbury may make a filing under section 4 of the NGA to initiate a general rate case and propose alternative rates for transportation to be effective no later than three years after the in-service date for the facilities authorized by this order.

#### D. Tariff Issues

##### 1. Imbalance Management

28. Section 284.12(b)(2)(iii) of the Commission's regulations provides:

Imbalance management. A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. A pipeline also must provide its shippers the opportunity to obtain similar imbalance management services from other providers and shall provide those shippers using other providers' access to transportation and other pipeline services without undue discrimination or preference.<sup>24</sup>

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<sup>21</sup> *Bison*, 131 FERC ¶ 61,013 at P 29; *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest*, 125 FERC ¶ 61,165 at P 34.

<sup>22</sup> 18 C.F.R. § 154.313 (2015).

<sup>23</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

<sup>24</sup> 18 C.F.R. § 284.12(b)(2)(iii) (2015).

29. Sunbury's pro forma General Terms and Conditions (GT&C) include Section 10 (Imbalance Management)<sup>25</sup> that permits shippers to net and trade their monthly transportation imbalances, sets forth a tiered mechanism for cashing out imbalances not resolved through netting and trading, and provides for the assessment of penalties on quantities greater than a five percent imbalance. However, Sunbury has not proposed a parking and lending service or other service to enable shippers to manage transportation imbalances in order to avoid imbalance penalties. In its application, Sunbury states that it has not proposed such services because it is fully subscribed and has limited operational capability for imbalance management.<sup>26</sup>

30. The fact that Sunbury is fully subscribed does not demonstrate that it will not be able to provide an imbalance management service, which is generally offered on an as-available interruptible basis. As Sunbury has not provided adequate justification for waiver of Section 284.12(b)(2)(iii)'s requirement that a pipeline, to the extent possible, provide for parking and lending or other services to facilitate its shippers' management of transportation imbalances, Sunbury is directed to propose such a service in its filing to comply with this order's required tariff changes.

## **2. Firm Transportation Enhancement Service**

31. Section 7 of Rate Schedule FT provides for a Firm Transportation Enhancement Service (FTES) entitling shippers with a primary contract term of one year or longer to nominate capacity exceeding their maximum daily transportation quantity (MDTQ), provided Sunbury has determined that capacity is available for FTES nominations. Sunbury would make that determination in accordance with a formula set forth in Section 7.1. of Rate Schedule FT, which states that Sunbury will make determinations regarding FTES availability "from time to time." Section 7 of Rate Schedule FT states that FTES is a firm service, and Section 3 describes the FTES recourse rate as a reservation rate.<sup>27</sup>

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<sup>25</sup> Unless otherwise indicated, all tariff references are to the pro forma tariff filed by Sunbury in Exhibit P of its application.

<sup>26</sup> Application at 9.

<sup>27</sup> According to the Statement of Rates, the maximum FTES reservation rate is \$0.4788 per Dth, which is also the same rate as the maximum Authorized Daily Overrun rate. See Application at Exhibit P-2.

32. The Commission disagrees with Sunbury's characterization of FTES service as a firm service. The FTES service is indistinguishable from authorized overrun service, which is an interruptible service for nomination, scheduling, curtailment and revenue crediting purposes.<sup>28</sup> Like authorized overrun service, FTES would not satisfy the definition of a firm service in section 284.7(a)(3) of the Commission's regulations, which defines firm service as service that "is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service."<sup>29</sup> The quantity of available FTES capacity would be determined by Sunbury only from "time to time," and FTES service could be nominated only at levels exceeding the shipper's maximum contract entitlement. Thus, the availability of FTES capacity would not be guaranteed. While Sunbury characterizes the FTES recourse rate as a reservation rate, it acknowledges the interruptible nature of the service by proposing to include FTES revenues in the interruptible revenue crediting mechanism in GT&C Section 15.<sup>30</sup>

33. In view of the above considerations, we are rejecting Sunbury's FTES proposal and directing Sunbury to remove all references to FTES from its tariff.<sup>31</sup>

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<sup>28</sup> In *Perryville Gas Storage LLC*, 139 FERC ¶ 61,032, at P 3 (2012), the Commission explained that "while authorized overrun service is associated with a firm rate schedule, it is still an interruptible service and indistinguishable from other interruptible services."

<sup>29</sup> 18 C.F.R. § 284.7(a)(3) (2015).

<sup>30</sup> Sunbury stated on page 11 of its Application that its FTES proposal was modeled after a similar service described in revised tariff records filed by Maritimes and Northeast Pipeline and accepted by a December 9, 2011 delegated letter order issued by the Commission's Office of Energy Market Regulation (OEMR) in Docket No. RP12-141-001. We note that OEMR's letter order did not discuss the merits of the revised tariff provisions and stated that "[t]his acceptance for filing shall not be construed ... as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your tariff ... ." Furthermore, OEMR's cited letter order did not establish Commission precedent.

<sup>31</sup> Because we are directing Sunbury to remove all tariff references to FTES, it will need to revise GT&C Section 6.2(e) to delete the language that would have allowed shippers to include FTES quantities in the same nomination transactions as quantities nominated on a primary basis within their MDTQs. We note that in any event, such language would have been inconsistent with North American Energy Standards Board (NAESB) Standard 1.3.19, which would have required that FTES quantities be nominated in separate transactions for overrun quantities.

### 3. Reservation Charge Credits and Liability for Damages

34. GT&C Section 11.12(d) provides in part:

Nothing herein shall limit Transporter's liability, if any, to Shipper for direct damages, *provided that any such damages shall be offset by the amount of any reservation charge credits required to be given under this Tariff.* [Emphasis supplied.]

35. Sunbury's offset proposal would reduce its liability exposure to direct damages by the amount of the reservation charges required under the tariff. In *Enable Gas Transmission, LLC*, the Commission found that a pipeline must be liable for direct damages for its own simple negligence.<sup>32</sup> The Commission also explained that requiring a pipeline to be liable for direct damages for their simple negligence gives service providers a powerful incentive to operate their systems in a reasonable and prudent manner.<sup>33</sup> Therefore, the italicized language in GT&C Section 11.12(d) is rejected and should be deleted when Sunbury files tariff records to comply with this order.

### 4. Map

36. Section 154.106 of the Commission's regulations requires that a pipeline company's Web site provide information that enables the public to access maps that show, inter alia, the general geographic location of the company's principal pipeline facilities and points at which service is rendered under its tariff.<sup>34</sup> Sunbury's proposed map section of its pro forma tariff is not in compliance with the Commission's regulations. Sunbury is required to provide in its tariff a uniform resource locator designating a location on the Internet for publication of its system maps.

### 5. GT&C Section 4 – Requests for Service

#### a. *Capacity Bidding and Evaluation Criteria*

37. GT&C Section 4.3(b) of Sunbury's pro forma tariff sets forth the capacity bidding and evaluation criteria for firm service. Sunbury proposes in Section 4.3(b) that "Transporter *may* grant requests for firm service...."

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<sup>32</sup> *Enable Gas Transmission, LLC*, 152 FERC ¶ 61,052, at P 148 (2015) (Enable).

<sup>33</sup> *Id.* P 149 (2015).

<sup>34</sup> 18 C.F.R. § 154.106 (2015).

38. The proposed tariff language is overly broad and may be unduly discriminatory. If a shipper requests firm service at the maximum recourse rate and the capacity is available, pipelines *must* contract with those shippers.<sup>35</sup> Therefore, when Sunbury files actual tariff records in accordance with the ordering paragraphs herein, it should revise GT&C Section 4.3 to state that transporter must grant requests for firm service at the maximum recourse rate if capacity is available.

*b. Right-of-First-Refusal (ROFR)*

*i. Notification of a Shipper's Intent to Exercise its ROFR Rights*

39. GT&C Section 4.8(c)(ii) of Sunbury's pro forma tariff provides that notification of the shipper's intent to exercise its ROFR rights is due on or before the earlier of (A) six months prior to the expiration date for shipper's Transportation Service Agreement (TSA); or (B) "the date of the notice period provided for in Shipper's TSA."

40. The Commission has previously held that a generally applicable ROFR process stated in the tariff cannot be superseded by a contract as that would impermissibly allow the deadline for a shipper to notify the pipeline to be negotiated separately from the generally applicable notice deadline.<sup>36</sup> Therefore, Sunbury is directed to remove subparagraph (B) from proposed GT&C Section 4.8(c)(ii).

*ii. Open Season for an Expansion Project*

41. GT&C Section 4.8(c)(v) of Sunbury's pro forma tariff states:

[I]f Transporter conducts an open season for an expansion project, the sizing of which could be affected by a shipper's plans regarding continuation of service under ROFR, Transporter may issue a separate notice during or after the open season that *requires* shippers to elect either (1) to terminate their respective TSAs at the end of the primary term or (2) *to extend the term of their respective TSAs to a term that is no less than the term established in the open season, or*

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<sup>35</sup> Section 284.7(b) of the Commission's regulations provides that an interstate pipeline that offers transportation service on a firm basis must provide each service on a basis that is equal in quality. 18 C.F.R. § 284.7(b) (2015).

<sup>36</sup> *Sierrita*, 147 FERC ¶ 61,192 at P 75; *Wyoming Interstate Co., L.L.C.*, 145 FERC ¶ 61,289, at P 6 (2013).

(3) *initiate ROFR notice processes concurrently with the open season instead of under GT&C Section 4.8(c)(i).* If Transporter issues the separate notice, Transporter shall issue such ROFR notice to all shippers whose TSAs will expire within 36 months from the proposed in-service date of the expansion project. Shippers will have forty-five (45) business days from the date of Transporter's notice or until the end of the open season, whichever is longer, to notify Transporter of its election. An extension under item (2) above shall be at the maximum recourse rate. [Emphasis supplied.]

42. The Commission rejects proposed GT&C Section 4.8(c)(v) as contrary to Commission policy, under which pipelines, after a fully-subscribed open season for a proposed expansion project, may issue a notice initiating an early ROFR process to shippers whose contracts will expire within 36 months before the projected in-service date of the expansion.<sup>37</sup> The Commission explained that such an early ROFR process can help the pipeline to ensure that its proposed expansion project is correctly sized.<sup>38</sup> The Commission clarified in *Southern* that such an early ROFR process is to be conducted under generally applicable ROFR provisions of the pipeline's tariff.<sup>39</sup> Under such general procedures, once an existing shipper issues a notice to the pipeline that it may wish to retain its capacity through the ROFR process, the pipeline must hold an open season requesting bids from third parties for all or a portion of the shipper's capacity, after which the shipper may decide whether to match the best bid or bids for all or a volumetric portion of the capacity it seeks to retain. However, the Commission also held that under the early ROFR process, pipelines are prohibited from holding one open season under which third parties would submit bids for a combination of the shipper's capacity and the proposed expansion capacity.<sup>40</sup> Instead, bids for the shipper's capacity may be submitted only in a separate open season occurring after an open season for an expansion that has been fully subscribed.<sup>41</sup>

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<sup>37</sup> *Sierrita*, 147 FERC ¶ 61,192 at PP 81-84; *Southern Natural Gas Company*, 128 FERC ¶ 61,211, at PP 88-89 (2009) (*Southern*); *Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,315 (2006).

<sup>38</sup> *Southern*, 128 FERC ¶ 61,211 at P 88 (citing *Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,315 at P 55).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Sierrita*, 147 FERC ¶ 61,192 at P 81.

43. Sunbury's proposal, in general, and particularly with regard to option (3) in GT&C Section 4.8(c)(v) is contrary to the Commission's requirements that the early ROFR notice be issued only after a fully-subscribed expansion open season, and that the ROFR process for the shipper's capacity be conducted in a manner consistent with the generally applicable ROFR process contained in the pipeline's tariff.

44. Further, Sunbury's option (2) in proposed GT&C Section 4.8(c)(v) is inconsistent with Commission policy because it would require ROFR shippers with expiring contracts to extend the term of their respective TSAs at the maximum recourse rate to a term that is no less than the term established in the open season. As the Commission found regarding a similar proposal in *Sierrita*,<sup>42</sup> Sunbury's option (2) would effectively turn the open season for the expansion capacity and the ROFR capacity into a single open season contrary to Commission policy and precedent.<sup>43</sup> That is because under such option, the existing shippers would have to match bids received in the expansion open season, up to the maximum recourse rate and to a term that is no less than the term established in the expansion open season. They would have no opportunity to match bids for their own expiring capacity submitted in a separate ROFR open season.

45. Moreover, similar to the proposal rejected by the Commission in *Southern*,<sup>44</sup> Sunbury's proposal is unduly discriminatory because it would require shippers with ROFR rights, whose contracts expire during a period an expansion is being planned, to match rates and/or contract terms in an expansion open season. However, shippers with ROFR rights whose contracts expire after the expansion has gone into service would not be subject to any similar requirement to match rates and/or contract terms in the expansion shippers' contracts.

iii. **Bid Evaluation**

46. GT&C Section 4.8(e) of Sunbury's pro forma tariff pertaining to ROFR states "Transporter's evaluation shall be based on one of the capacity release bid evaluation methods listed in GT&C Section 9.11(d)." Section 9.11(d)(iv) lists criteria that allow for weighting of factors such as quantity, term, and rate.

47. Section 284.221(d)(ii) of the Commission's regulations provides pre-granted authorization for a pipeline to abandon transportation service for a shipper upon the expiration of the contract term unless the shipper gives notice that it wants to continue its

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<sup>42</sup> *Id.* P 83.

<sup>43</sup> *Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,315 at P 55.

<sup>44</sup> *Southern*, 128 FERC ¶ 61,211 at P 89.

transportation arrangement and will match the longest term and the highest rate for its firm service, up to the applicable maximum rate.<sup>45</sup> However, Section 284.221(d)(ii) does not state that the shipper must agree to match the longest term and highest rate for all its capacity, and the Commission finds that for ROFR open seasons, quantity should not be included as part of the bid evaluation. ROFR shippers have a right to retain only a volumetric portion of their capacity, which could be a lesser quantity than a third party bid. Therefore, Sunbury is required to revise proposed Section 4.8(e) to clarify that for purposes of ROFR bid evaluation, a shipper may retain a portion of its capacity by matching the longest term and highest rate only for that portion.

## **6. GT&C Section 6.7 and 11.8 - Liability**

48. GT&C Section 6.7 of Sunbury's pro forma tariff states "Transporter shall not be liable for any damages which may directly or indirectly result from Transporter's implementation of the allocation procedures set forth in this Section 6 so long as Transporter complies with such provisions."

49. The Commission finds that Sunbury should be liable in cases where, notwithstanding that it may have complied with all applicable provisions of Section 6 of its tariff, it was nevertheless negligent. The Commission explained in *Enable* that requiring a pipeline to be liable for direct damages for their simple negligence gives service providers a powerful incentive to operate their systems in a reasonable and prudent manner.<sup>46</sup> Therefore, the Commission requires Sunbury to revise Section 6.7 of its tariff to be consistent with Commission policy.<sup>47</sup>

50. GT&C Section 11.8 of Sunbury's pro forma tariff states "Transporter shall not be liable to any person for any costs, damages or other liability associated with the issuance of, or the failure to issue, any Action Alerts or OFOs [Operational Flow Orders], provided, however, Transporter shall be liable for negligence or undue discrimination, such as standards to be judged in light of the emergency conditions under which Action Alerts and OFOs are issued."

51. The Commission finds the language in Section 11.8 unclear and confusing since the first part of this section provides that Sunbury shall not be liable for damages resulting from its "failure to issue" an Action Alert or OFO, which is a form of negligence, and the last part of this section provides that Sunbury will be liable for

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<sup>45</sup> 18 C.F.R. § 284.221(d)(ii) (2015).

<sup>46</sup> *Enable*, 152 FERC ¶ 61,052 at P 149.

<sup>47</sup> *Id.* PP 160-161.

negligence in not issuing an Action Alert and OFO. The Commission also finds this section is contrary to the Commission's holding in *Enable*, where the Commission explained that no such limitation on indirect or consequential damages should be allowed for a pipeline's gross negligence, since gross or willful misconduct should be strongly discouraged.<sup>48</sup> Therefore, the Commission rejects Section 11.8 of Sunbury's GT&C.

## 7. GT&C Section 4.13 - Negotiated Rate Authority

52. Sunbury requests negotiated rate authority set forth in GT&C Section 4.13 of its pro forma tariff and in accordance with the Commission's Alternative Rate Policy Statement.<sup>49</sup> The Commission will grant Sunbury authority to enter into negotiated rate contracts, subject to the following discussion and conditions.

53. Under the Alternative Rate Policy Statement, pipelines are required to report discounted transactions with their affiliated marketers.<sup>50</sup> In addition, the Commission requires pipelines to maintain specific data regarding each individual negotiated rate transaction.<sup>51</sup> GT&C Section 4.13(v) of Sunbury's pro forma tariff states that "Prior to or on the same day as the commencement of service at such negotiated rate, Transporter shall file: (A) the negotiated rate TSA; or (B) a tariff provision advising the Commission of such negotiated rate TSA, stating the exact legal name of shipper and specifying the actual negotiated rate or rate formula included in such agreement." Sunbury's proposed list of items to report to the Commission is incomplete. Commission policy requires that if a pipeline files a tariff record reflecting the terms of a negotiated rate agreement, the tariff record summary must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service and the volume of natural gas to be transported.<sup>52</sup>

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<sup>48</sup> *Id.* P 151.

<sup>49</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 (1996), *clarification granted*, 74 FERC ¶ 61,194 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996). *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

<sup>50</sup> 18 C.F.R. § 161.3 (2015).

<sup>51</sup> *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,037 (1996); *Equitrans, Inc.*, 152 FERC ¶ 61,003, at PP 6-8 (2015).

<sup>52</sup> *Id.*

GT&C Section 4.13(v) of Sunbury's pro forma tariff fails to include all of these essential elements. Therefore, Sunbury must revise GT&C Section 4.13(v) to list all of the required essential elements consistent with the Commission's Alternative Rate Policy Statement.

## **8. GT&C Section 6.5 – Nominations and Scheduling Procedures**

54. GT&C Section 6.5 sets forth curtailment priorities when service is interrupted due to capacity limitations. Sunbury proposes to curtail service in the following order: (a) all imbalance and makeup/payback quantities under Rate Schedule FT and IT on a pro rata basis based on nominated and confirmed quantities; (b) makeup/payback quantities under Operational Balancing Agreements; (c) authorized overrun quantities under Rate Schedule FT and interruptible service under Rate Schedule IT with allocation of capacity based on the rate paid; (d) firm quantities utilizing flow path secondary and/or secondary capacity; and (e) firm quantities utilizing primary capacity, including FTES capacity.

55. As proposed, GT&C 6.5 would curtail services in the reverse order from which they were scheduled in proposed GT&C 6.3, except that authorized overrun quantities under Rate Schedule FT and interruptible service under Rate Schedule IT would be curtailed directly after quantities under Operational Balancing Agreements. To be consistent with the reverse order of Sunbury's scheduling priorities in proposed Section 6.3 and Commission precedent,<sup>53</sup> authorized overrun and IT services should be curtailed directly after (a), all imbalance and makeup/payback quantities under Rate Schedule FT and IT. The next services to be interrupted after (b), authorized overrun and IT services, should be (c), quantities under Operational Balancing Agreements. Therefore, Sunbury is directed to revise GT&C Section 6.5 to reflect curtailment of authorized overrun and IT services second and curtailment of Operational Balancing Agreements third.

56. In addition, Sunbury's proposal in (d) and (e) is inconsistent with Commission policy that once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether the capacity is utilized on a primary, secondary, or flow-path secondary basis, and curtailed on a pro rata basis.<sup>54</sup> Therefore, the Commission directs Sunbury to revise GT&C Section 6.5(d) and (e) as having the same curtailment priority, which is the last of all curtailment priorities and curtailed on a pro rata basis.

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<sup>53</sup> *Sierrita*, 147 FERC ¶ 61,192 at P 73.

<sup>54</sup> *Id.* P 72.

## 9. GT&C Section 10.4 – Cash Out

57. GT&C Section 10.4(b)(i) of Sunbury's pro forma tariff states that the Reference Spot Price for each week will be Natural Gas Week, Transco-Leidy Line Price from Natural Gas Weekly Spot Prices, which will be used as the price index for cash out imbalances remaining at the end of each month. However, in Sunbury's September 17, 2015 Response to the Commission staff's Data Request, it explained that it is appropriate to change the index pricing mechanism in its tariff to use a 35-day average of the daily "Midpoint" price for the Transco-Leidy Line receipts index, as published in Platt's Gas Daily, or any successor publication, for the days of the calendar month in which the transportation imbalance occurred.<sup>55</sup> Sunbury believes that the Platt's Gas Daily price index is more closely aligned with the active natural gas markets proximate to its pipeline system, is used by interconnecting pipelines, and that the use of the average daily indices to derive the cash-out prices will result in pricing that is more reflective of those markets.

58. Commission policy requires specific criteria for minimum levels of activity at a particular trading location in order for that index location to be used in jurisdictional tariffs.<sup>56</sup> The policy requires daily or hourly indices to meet at least one of the following conditions on average for all non-holiday weekdays within a 90-day review period:

- 1) Average daily volume traded of at least 25,000 MMBtus for gas or 2,000 MWh for power.
- 2) Average daily number of transactions of five or more.
- 3) Average daily number of counterparties of five or more.

59. The Commission has previously held that Platt's Gas Daily is an approved index developer.<sup>57</sup> Therefore, the Commission approves Sunbury's proposal to use Platt's Gas Daily price index subject to condition. The Commission realizes fluctuation in liquidity may exist for various price indices due to constant changes in market condition. As such, the Commission directs Sunbury to ensure that all price indices used in its pro forma tariff shall satisfy the above criteria before implementation.

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<sup>55</sup> See Sunbury's September 17, 2015 Response to Data Request, at Response 2.

<sup>56</sup> *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at P 66 (2004).

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

### **10. GT&C Section 13 - Fuel and L&U (FL&U)**

60. Sunbury proposes a fuel tracker as part of its pro forma tariff. GT&C Section 13.3 of the pro forma tariff states “*Annually, or at such other times as Transporter in its reasonable discretion determines necessary based upon operating or other conditions, Transporter shall adjust the FL&U reimbursement percentages, to take into account both prospective changes in FL&U requirements and unrecovered FL&U quantities from the preceding period... .*” [Emphasis supplied.]

61. Section 154.403 of the Commission’s regulations requires a pipeline company that passes through or adjusts its fuel reimbursement percentage to, among other things, include “[a] statement of the frequency of the adjustment and the dates on which the adjustment will become effective.”<sup>58</sup> To be consistent with this regulation, when Sunbury files its actual tariff, it should revise GT&C Section 13.3 to reflect a filing requirement that specifically details the dates (i.e., months(s)) on which the adjustments will become effective.

### **11. GT&C Section 14.2 – Crediting of Penalties**

62. GT&C Section 14.2(d) of Sunbury’s pro forma tariff provides for interest on penalty monies collected. Specifically, Section 14.2(d) states “[i]n the event credits for a given month are booked to Account No. 108 pursuant to GT&C Section 14.2(c), no interest will be computed or added to such credit amounts.”

63. The Commission finds that the use of Account No. 108 for the purpose of applying OFO and unauthorized overrun penalties incurred on Sunbury’s pipeline is inappropriate and inconsistent with Commission policy.<sup>59</sup> This proposed crediting mechanism would only provide a benefit to shippers following a future rate case. Further, since Sunbury is not obligated to file a rate case and propose to pass the credits on in the form of a reduction to rate base through accumulated depreciation, booking credits to Account No. 108 might not result in a 100 percent benefit to future recourse rate payers. Therefore, such credits should be applied to Account No. 495, *Other Gas Revenues*,<sup>60</sup> so that penalty revenues are passed on to shippers on a yearly basis. In

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<sup>58</sup> 18 C.F.R. § 154.403(c)(4) (2015).

<sup>59</sup> *Sierrita*, 147 FERC ¶ 61,192 at P 87.

<sup>60</sup> 18 C.F.R. Part 201, Account 495 (2015).

addition, interest should be included pursuant to Section 154.501(d) of the Commission's regulations.<sup>61</sup> Sunbury is directed to revise GT&C Section 14.2(d) accordingly.

## 12. GT&C Section 15 – Revenue Sharing Mechanism

64. GT&C Section 15.2 of Sunbury's pro forma tariff provides that in the event Sunbury receives IT transportation or FTES revenue in excess of the cost allocation in any one month, Sunbury shall credit such excess revenues. Specifically, Section 15.2 states in part that excess revenues shall be credited to shippers under Rate Schedule FT that are "(i) paying the maximum recourse rate; (ii) paying a negotiated rate that is higher than the maximum recourse rate; or (iii) *identified as foundation customers in Transporter's FERC Certificate Application in CP15-[525]-000...*" [Emphasis supplied.]

65. As discussed above, we are rejecting Sunbury's proposal to provide FTES, and the crediting of any FTES revenue therefore is moot. Further, Sunbury's proposal for crediting of IT revenue is not consistent with Commission policy, which generally requires pipelines to allocate costs to all services (including interruptible and short-term firm transportation) or credit 100 percent revenues generated by interruptible services, net of variable costs, to firm and interruptible shippers paying maximum recourse rates.<sup>62</sup> Crediting IT revenues keeps pipeline revenue within the expected cost of service and reduces what customers pay for firm service, effectively lowering their rates to the level that would result if costs were allocated between firm and interruptible services.<sup>63</sup> Since the purpose of interruptible revenue credits is to protect the pipeline's customers from too low an allocation to interruptible service, it follows that customers receiving the credits should be the customers that would be harmed by the erroneously low allocation of costs to interruptible service. An allocation of too few costs to interruptible service causes both the firm and interruptible maximum rates to be too high.<sup>64</sup>

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<sup>61</sup> 18 C.F.R. § 154.501(d) (2015).

<sup>62</sup> *See, e.g., Florida Southeast Connection, LLC et al.*, 154 FERC ¶ 61,080, at P 129 (2016).

<sup>63</sup> *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 108 FERC ¶ 61,052, at P 4 (2004) (*Cheyenne*).

<sup>64</sup> *Sierrita*, 147 FERC ¶ 61,192 at P 42; *Transcontinental Gas Pipe Line Corp.*, 78 FERC ¶ 61,057, at 61,209 (1997).

66. Section 15.2 of Sunbury's pro forma tariff would entitle its foundation shipper Hummel, which has agreed to a negotiated rate lower than the maximum recourse reservation rate, to benefit from the crediting of IT revenues. While Commission policy permits negotiated rate shippers to negotiate the sharing of revenue generated by IT service,<sup>65</sup> it is not appropriate for Sunbury to include in its GT&C negotiated rate provisions that will apply to Hummel and will not be generally applicable to other negotiated rate shippers paying less than the maximum recourse rate. Further, the Commission requires interruptible revenue crediting to occur regardless of any negotiated rate terms. Consequently, negotiated revenue credit provisions cannot prevent non-negotiated rate shippers from receiving a proportionate share of IT revenue. In view of these considerations, Sunbury must revise GT&C Section 15.2 of its pro forma tariff to craft a provision that addresses both negotiated rate customers and any recourse rate shippers that take service on its pipeline to ensure that their proportionate shares of IT revenue credits.

67. Finally, as discussed above, overrun service is interruptible in nature, and Commission policy requires the crediting of revenue from all interruptible services.<sup>66</sup> While Sunbury states on page 4 of its August 28, 2015 Data Response that revenue from authorized overrun services will be credited to shippers, pro forma GT&C Section 15 does not provide for such crediting. Therefore, in its tariff filing to comply with this order, Sunbury is directed to include in revised GT&C Section 15 a requirement to credit, in addition to revenues from IT service, revenues from authorized overrun service under Rate Schedule FT, and from the imbalance management service required by this order. In addition, Sunbury is required to revise Section 15 of its tariff to include interest in the revenues to be credited to shippers pursuant to Section 154.501(d) of the Commission's regulations.<sup>67</sup> Finally, Sunbury is required to remove all references to FTES service for the reasons discussed above.

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<sup>65</sup> *Cheyenne*, 108 FERC ¶ 61,052 at PP 12 &13.

<sup>66</sup> *See, e.g., Colorado Interstate Gas Company*, 131 FERC ¶ 61,086, at P 33 (2010).

<sup>67</sup> 18 C.F.R. § 154.501(d) (2015). *See also Cheyenne*, 108 FERC ¶ 61,052 at P 14 (explaining that "[t]he Commission permits all shippers including long-term firm, short-term firm, interruptible and negotiated rate shippers to receive their proportionate share of any net penalty revenues since they are subject to the penalties that generate the revenue.").

**13. GT&C Section 23 - North American Energy Standards Board (NAESB)**

68. Sunbury adopted the Business Practices and Electronic Communications Standards of NAESB Wholesale Gas Quadrant's (WGQ) Version 2.0.<sup>68</sup> Sunbury states that it has identified those standards incorporated by reference in GT&C Section 23. Sunbury also states that those standards not incorporated by reference have also been identified, together with the tariff record in which they are located. However, NAESB Standard 4.3.4 pertaining to trading partners is missing from the table identifying standards incorporated by reference in Section 23. Further, proposed dataset 0.4.1 pertaining to natural gas storage information as listed in the table identifying standards incorporated by reference is unnecessary since Sunbury will not operate any storage facilities and, therefore, should be removed. When Sunbury files its tariff in compliance with this order, it is required to revise its tariff accordingly.

69. In the event an updated version of the NAESB WGQ standards is adopted by the Commission prior to Sunbury's in-service date, the Commission directs Sunbury to modify Section 23 consistent with the then-current version.

**14. Non-Conforming Service Agreement Provisions**

70. Sunbury states that the Rate Schedule FT service agreement executed with Hummel will contain certain deviations from the pro forma Rate Schedule FT service agreement set forth in the tariff. Sunbury submits that these deviations are not material, and requests that the Commission approve them. Sunbury states that these provisions were an integral part of the arrangements under which Hummel agreed to provide contractual support for the project. Sunbury states that absent the contractual commitments set forth in the precedent agreement, the pipeline would not go forward since the routing and sizing of the pipeline were determined in negotiation with Hummel to enable it to meet its fuel requirements for gas-fired electric generation at its station. Sunbury emphasizes that Hummel has made a 30-year commitment to take the overwhelming majority of capacity in the project, subject to certain limited protections it requires to finance and operate its generation facility. Additionally, Sunbury states that none of the provisions in the precedent agreements affects the actual terms or quality of service on the Sunbury's pipeline and that, therefore, none of these contract provisions creates the risk of undue discrimination under the Commission's policy regarding material deviations.

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<sup>68</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012).

71. The deviations contained in the Hummel service agreement are as follows:
- a. Article III, Section 1 contains conditions precedent for both Sunbury and Hummel relating to receipt of authorizations, compliance with the agreement, satisfaction of credit requirements, achievement of the closing of Hummel's financing, and the achievement of the project in-service date.
  - b. Article IV, Section 3.a contains minimum delivery pressure commitments<sup>69</sup> by Sunbury to Hummel, and provides remedies for Hummel in the event that Sunbury fails to meet the commitments.<sup>70</sup>
  - c. Article IV, Section 3.c provides credit requirements that differ from the generally applicable creditworthiness provisions contained in Section 4.11 of the GT&C of the tariff. In conjunction with these credit requirements, Exhibit 2 to the Hummel service agreement provides a form of parent guarantee for Hummel.
  - d. Article VII, Section 3 contains assignment provisions that vary from the assignment provision of the pro forma Rate Schedule FT service agreement. These provisions are related to the financing of the Hummel Station facility, and provide Hummel with the right to assign the service agreement without Sunbury's consent in certain instances.
  - e. Section IV.c. of Exhibit 1 contains a Most Favored Nation provision providing for Hummel to have the right to obtain the benefit of more favorable rates and charges that Sunbury may in the future provide to another shipper, subject to certain limitations set forth in the provision.
  - f. Section IV.d. of Exhibit 1 gives Hummel the right to receive a rate reduction if Sunbury expands the capacity of the pipeline by 50,000 Dth per day or more, and the maximum monthly rate for transportation service on the mainline is reduced.

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<sup>69</sup> Section 5.5 of Sunbury's GT&C provides for mutually agreed minimum receipt and delivery pressure levels with shippers on a non-unduly discriminatory basis. Article IV, Section 3 of the non-conforming agreement provides that if Sunbury does not meet its delivery pressure obligations, it is liable solely to Hummel for payment not to exceed \$150,000.00 per day.

<sup>70</sup> The Commission interprets this provision as not impacting other shipper's charges or credits.

- g. Schedule 1 contains definitions that are related to the non-conforming provisions described above, and particularly the credit provisions of Article IV, Section 3.b. of the Hummel service agreement.

72. In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.<sup>71</sup> However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding pro forma service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>72</sup> Below we apply this standard of review to Sunbury's proposed non-conforming provisions.

73. The Commission finds that the incorporation of these non-conforming provisions constitutes material deviations from Sunbury's pro forma service agreement for Rate Schedule FT. However, in other proceedings, the Commission has recognized that non-conforming provisions may be necessary and permissible to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of the project.<sup>73</sup> Here, the Commission finds that the non-conforming provisions identified by Sunbury are permissible since they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service to other shippers, and do not result in any shipper receiving a different quality of service.<sup>74</sup> As discussed further below, when Sunbury files any non-conforming agreement with the Commission, it must identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation

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<sup>71</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*); *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001) (*ANR*).

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

<sup>73</sup> See *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008) and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

<sup>74</sup> See *Gulf South Pipeline Co.*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.<sup>75</sup>

74. At least 30 days, but no more than 60 days, before providing service to shippers under non-conforming agreements, Sunbury must file an executed copy of each non-conforming agreement disclosing and reflecting all non-conforming language as part of its tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.<sup>76</sup> In addition, the Commission emphasizes that the above determination relates only to those items described by Sunbury in its certificate application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

#### **E. Environmental Analysis**

75. The Commission began its initial review of the proposed project following its approval for Sunbury to use the pre-filing process on December 30, 2014, in Docket No. PF15-9-000. On March 16, 2015, as part of the pre-filing review, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Planned Sunbury Pipeline Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; affected landowners, environmental and public interest groups; Native American tribes; and local libraries and newspapers.

76. We received 64 comments in response to the NOI, 42 of which were in support of the project. One public scoping meeting was held in Milton, Pennsylvania on April 7, 2015. Approximately 21 people gave oral comments at the scoping meeting. The commenters stated concerns regarding water quality, subsidence and geologic hazards, forest fragmentation, pipeline route adjustments, and cumulative impacts.

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<sup>75</sup> A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission consistent with section 154.112 of the Commission's regulations. *Tennessee Gas Pipeline Co., L.L.C., et al.*, 150 FERC ¶ 61,160, at P 44 & n.33 (2015).

<sup>76</sup> 18 C.F.R. § 154.112 (2015).

77. To satisfy the requirements of the National Environmental Policy Act,<sup>77</sup> our staff prepared an environmental assessment (EA) for Sunbury's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Pennsylvania Fish and Boat Commission participated as cooperating agencies in the preparation of the EA. All substantive comments received in response to the NOI were addressed in the EA.

78. The EA was issued for a 30-day comment period and placed into the public record on December 28, 2015. The Commission received comments on the EA from Cynthia O'Hara, David and Jean Litchard, John Grove, the Gray Family, the U.S. Environmental Protection Agency (EPA), the Pennsylvania Department of Transportation (PennDOT), and Sunbury.<sup>78</sup> The primary issues raised by the commenters include general project concerns; route alignment variation recommendations; geology and soil impacts; horizontal directional drill impacts on water resources; surface water and wetland impacts; aquatic, wildlife, and vegetation impacts; noise impacts; cumulative impacts; greenhouse gas and climate change; and miscellaneous concerns. In addition, Sunbury provided project updates, clarifications, and responses to comments on January 7, 28, and 29, 2016.

79. The EPA, Region III Office, provided extensive comments recommending that additional analysis, data, tables, or figures should be provided in the EA to add clarification or detail to the analysis. We considered the EPA's suggested recommendations, and find that the requested clarifications or additional analyses do not change the EA's findings or our conclusions. We clarify that the EA was issued as the

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<sup>77</sup> 42 U.S.C. §§ 4321-4370 (2012). *See also* 18 C.F.R. pt. 380 (2015) (Commission's regulations implementing NEPA).

<sup>78</sup> Sunbury's January 28, 2016 comments clarified that the maps in Appendix A to the EA did not reflect minor route adjustments that were made in response to additional survey data and landowner feedback, but that such route adjustments are reflected in revised maps that were filed and in the public record before Commission staff completed its environmental review and issued the December 28, 2015 EA. Sunbury also clarified that two residences described in the EA as being within 10 feet of project construction areas are actually both located more than 35 feet from construction areas and that Sunbury will submit documentation of consultation with these landowners and include residences-specific construction plans in the Implementation Plan that it is required to file for the Director of the Office of Energy Project's review prior to receiving construction clearance.

final EA, and all substantial comments received on the EA during the public comment period are addressed in this order. Below we discuss EPA's substantive concerns on specific resources, as well as comments received from other individuals that require clarification to issues addressed in the EA.

## 1. Route Variations

### a. *Litchard Property*

80. Following issuance of the EA, David and Jean Litchard filed comments on January 14, 2016, expressing concern that Sunbury's pipeline project will have an adverse impact on their farm because their land is highly erodible. The Litchards are concerned about the pipeline construction affecting crop operations, disturbing drainage tiles, and affecting water quality and trout in the nearby creek. The Litchards indicate that they previously requested that Sunbury change its proposed pipeline route to move the portion of the pipeline route that follows a property line on their side of the line 75 feet to the south, on to the abutting property.<sup>79</sup> They represent that the owner of the adjoining land is amenable to having the pipeline placed on his side of the property line. In response to the Litchards' letter, Sunbury states that it had already shifted the route to the south to the greatest extent practical on the Litchards' property.<sup>80</sup> This route adjustment was previously incorporated into the proposed route in response to a request by the Litchards to avoid a future subdivision development. Sunbury states that it also investigated shifting the alignment further to the south and onto the property of an agreeable adjoining landowner. However, Sunbury concluded that this route variation would have greater environmental impacts when compared to the corresponding segment on the Litchard property, as it would cross two wetland areas and would require tree clearing.

81. Commission staff reviewed the Litchards' requested rerouting to place more of Sunbury's pipeline on the abutting property. Both routes are about the same length and impact about the same amount of land. However, the Litchards' property is agricultural land fields, while their suggested route variation over the adjacent property would impact wetlands and scrub pine forest.

82. Sunbury's Erosion and Sedimentation Control Plan (E&SCP) contains mitigation measures and requires Best Management Practices to minimize impacts on agricultural land and other resources. The requirements include, *inter alia*, topsoil segregation and

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<sup>79</sup> The Litchards' requested route variation would reduce the portion of the pipeline route on their property from approximately 1,425 feet to 374 feet.

<sup>80</sup> Sunbury January 29, 2016 Filing at 1-2.

replacement, revegetation and other erosion control measures, working with agricultural landowners to identify drain tiles and irrigation systems, being responsible for repairs needed as a result of pipeline construction activities and monitoring agricultural areas following construction until restoration is complete.<sup>81</sup> The conditions in Sunbury's E&SCP should ensure restoration of agricultural land, including the Litchards' farmland to pre-construction conditions.<sup>82</sup> On the other hand, moving the pipeline to the adjacent landowner's property as requested by the Litchards would cross more wetland area and require more tree clearing.

83. In view of the above considerations, we will approve the proposed route on the Litchard property. As discussed above, the mitigation measures required by Sunbury's E&SCP should be adequate to address the Litchards' concerns regarding erosion. However, in view of their concern and representation that their farm soil is highly erodible, we are adding an environmental condition to require that Sunbury file, for review and approval by the Director of the Commission's Office of Energy Projects (OEP), a plan describing how Sunbury will implement the drainage mitigation and restoration measures described required by its E&SCP on the Litchards' farm. The additional Environmental Condition No. 15 is included in the appendix to this order.

*b. Gray Property*

84. The EA considered five possible route variations for the routing of Sunbury's pipeline over the Gray family's 224-acre farm, including a route variation proposed by Mr. Gray that would move the pipeline to the west of Sunbury's proposed route. Mr. Gray requested the change because he planned to construct several barns in an area crossed by Sunbury's proposed route. However, no land specific development plans had been prepared as of that time, and his requested route variation would have placed the pipeline closer to existing high voltage power lines and in proximity to several residences, increased the number of abutting properties, required more tree clearing, and crossed more streams, ponds, and wetland areas.<sup>83</sup> The EA concluded that Sunbury's

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<sup>81</sup> EA at 68.

<sup>82</sup> EA at 30-31 and 68. If the Litchards and Sunbury are unable to reach agree on the amount of compensation for any lost crop production or for damages during construction, the amount of compensation will have to be resolved by a court with jurisdiction to resolve such issues. The Commission has no jurisdiction to determine the amount of compensation for property rights needed for pipeline or for damages caused by the construction or operation of pipeline facilities. *See, e.g., Florida Southeast Connection, LLC, et al.*, 154 FERC ¶ 61,080 at PP 66 & 69.

<sup>83</sup> EA at 114 and 115.

proposed route was environmentally preferable to Mr. Gray's requested route variation and that none of the other alternatives were environmentally preferable to Sunbury's proposed route.<sup>84</sup>

85. Following issuance of the EA, Mr. Gray filed additional comments on January 28, 2016 and February 1, 2016, in which he states that an agricultural developer is now assisting him with siting and planning poultry integrator facilities.<sup>85</sup> Mr. Gray also states that he met again with Sunbury, and that they agreed upon a route that would place the pipeline to the west of Sunbury's proposed route but not as far west as Mr. Gray's originally requested route variation that was considered in the EA. Commission staff reviewed the new route variation, identified as Route Variation 41B,<sup>86</sup> and concluded that it would not have any greater environmental impacts than Sunbury's proposed route that the EA found would be environmentally acceptable. However, Mr. Gray now states that he has been advised that additional land will be needed for the facilities, and the Grays and Sunbury thus far have not reached agreement in the area where the poultry facilities are to be located. Based on the map that Mr. Gray filed with his January 28 and February 1, 2016 comments indicating the location of the planned poultry facilities, Commission staff has concluded that minor adjustment of Route Variation 41B should be feasible to accommodate Mr. Gray's plans.

86. Therefore, we are including in the appendix to this order Environmental Condition No. 16 requiring Sunbury to file, for review and approval by the OEP Director, a final alignment on the Gray family's property that incorporates Route Variation 41B with modification to avoid the Grays' planned poultry facilities.

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<sup>84</sup> EA at 115.

<sup>85</sup> Poultry integration is a form of contract farming. Poultry integrators hire farmers to raise chickens in facilities constructed by the farmers at their own expense according to the poultry integrators' specifications.

<sup>86</sup> In its January 29, 2016 comments, Sunbury states that it presented Route Variation 41B to the Grays as an option that would accommodate the planned poultry facilities with no greater environmental impacts than Sunbury's originally proposed route considered in the EA.

## 2. Geology/Soil Resources

### a. *Karst Terrain*

87. The EPA asserts that segments of the project route may have detrimental impacts in areas with karst terrain if combined with construction processes such as hydrostatic testing.<sup>87</sup> EPA states that the information in the EA lacks enough detail to support the conclusions made that the project would not create any hazardous situations during construction and operation. Specifically, the EPA asserts that the EA should address: a) karst, mining and quarry locations with integrated mapping; b) the proposed location of hydrostatic test water discharges as they may impact karst terrain; c) effects of blasting in landslide prone areas and how the blast rock would be hauled away or disposed of; d) the number of acres that would be affected by soil compaction; and e) the process of returning soils to original condition after construction to minimize impact on soil infiltration capacity and to minimize the mixing of topsoil and subsoil.

88. In terms of integrated mapping, Appendix A of the EA shows the pipeline route marked by mileposts on U.S. Geological Survey (USGS) 7.5-minute topographic maps reproduced at a scale of 1:24,000 (1 inch = 2,000 feet). These USGS topographic maps can be cross-referenced with the Karst Mitigation Plan map that shows the areas characterized by karst terrain.<sup>88</sup> USGS topographic maps also note the presence of mines and quarries using standard USGS symbols and notations.<sup>89</sup>

89. In considering karst terrain as a factor in locating hydrostatic test water discharges, the EA discusses measures Sunbury would use during construction to control internal drainage along the right-of-way and describes the measures that would be used to control discharge waters from hydrostatic testing in karst areas.<sup>90</sup> The EA specifically states that final grading of contours and any necessary permanent erosion and sediment controls would be designed to prevent runoff from accumulating in the area of karst voids. In addition, during discharge of any hydrostatic test water from the pipeline, a discharge

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<sup>87</sup> Karst is a terrain with distinctive landforms and hydrology created from the dissolution of soluble rocks, principally limestone and dolomite. Karst terrain is characterized by springs, caves, sinkholes, and a hydrogeology that results in aquifers vulnerable to contamination. <http://water.usgs.gov/ogw/karst/pages/whatiskarst>.

<sup>88</sup> EA, Appendix D, at Figure 1.

<sup>89</sup> EA, Appendix A, Map 6 of 11.

<sup>90</sup> EA at 25.

location would be selected that would prevent the discharge water from encountering any unanticipated feature during trenching activities.

90. In terms of blasting in landslide prone areas, the EA states that 14.4 miles of the project's 34.4 mile route include areas with moderate to high incidence for landslides, and 20 miles of the route are characterized by areas with low incidence for landslides.<sup>91</sup> Shallow bedrock areas along the route where blasting may need to be utilized include about 2.4 miles within areas mapped as having a low incidence of landslide; about 1.11 miles is within areas mapped as having a high susceptibility and moderate incidence for landslides. The EA states that during construction in areas of steep slopes, Sunbury would use permanent trench breakers and water bars and follow erosion control Best Management Practices in the E&SCP to minimize the risk of landslides. The E&SCP also contains measures to limit the amount of blast rock that could be reused in the backfilled trench. The E&SCP requires that excess blast rock be removed to approved disposal areas that the amount of rock remaining in the construction work areas following construction is consistent with the amount of rock on land adjacent to the work areas.

*b. Effects of soil compaction on crop production*

91. EPA comments on the potential for soil compaction and reduced water filtration as the result of Sunbury's pipeline construction project and those impacts' effects on the production of agricultural crops, particularly crops that have longer gestation periods. The EPA recommends that the EA explain how farmers would be compensated for the time that they will not be able to produce crops.

92. The EA lists the types of soil along the project route,<sup>92</sup> identifies soils areas prone to compaction,<sup>93</sup> and discusses mitigation measures,<sup>94</sup> including testing to identify pre-construction conditions,<sup>95</sup> segregation and replacement of topsoil,<sup>96</sup> and employing deep tillage in soil compacted during construction to de-compact prior to completion of

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<sup>91</sup> EA at 24.

<sup>92</sup> EA at 26-27.

<sup>93</sup> EA at 27, Table B-1.

<sup>94</sup> EA at 29.

<sup>95</sup> EA at 28-30.

<sup>96</sup> EA at 29.

restoration and revegetation measures.<sup>97</sup> To prevent potential reduction of infiltration capacity following construction, Sunbury will use penetrometers to test topsoil and subsoil for compaction at regular intervals, and will de-compact soils using a paraplow or other deep tillage prior to completion of restoration and revegetation.<sup>98</sup> The EA concludes that, with implementation of Sunbury's E&SCP and Spill Prevention, Control, and Countermeasure (SPCC) Plan, soil compaction will be adequately minimized.<sup>99</sup> As discussed above, the Commission does not have jurisdiction to determine or order compensation for damages such as lost income from crop production. Therefore, in any instances where compensation for lost crop production cannot be resolved through negotiation by Sunbury and affected farmers, such matters will have to be resolved by a court with jurisdiction to resolve such issues.<sup>100</sup>

### 3. Horizontal Directional Drilling/Groundwater

93. The EPA expresses concern about the project's impacts on water resources, specifically from potentially difficult horizontal directional drill (HDD) crossings of fractured limestone, such as the crossing underneath Stetler Avenue between MP 33.8 and MP 33.9 in Monroe Township in Snyder County, Pennsylvania.<sup>101</sup> Cynthia O'Hara is concerned that the HDD will adversely affect her water well on her property located between MP 34.1 and MP 34.2.<sup>102</sup> As discussed in the EA, the area where the Stetler Avenue HDD crossing will occur contains carbonate bedrock with the potential for karst development.<sup>103</sup> However, as discussed in the EA, geotechnical investigation and hydrofracture (inadvertent release of drilling fluids) analysis showed that HDD can be

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<sup>97</sup> EA at 28-30.

<sup>98</sup> EA at 29.

<sup>99</sup> EA at 31.

<sup>100</sup> See, e.g., *Florida Southeast Connection, LLC, et al.*, 154 FERC ¶ 61,080 at PP 66 & 69.

<sup>101</sup> The Stetler Avenue Crossing will be a 2,328-foot crossing for installation of pipeline installed to a maximum depth of about 70 feet below Stetler Avenue in the Shamokin Dam Borough of Monroe Township. The Monroe Township and Shamokin Dam Borough have given approval to co-locate the pipeline in the roadway via HDD and temporarily close the road during construction. EA at 38 and 114.

<sup>102</sup> Ms. O'Hara's January 1, 2016 comments.

<sup>103</sup> EA at 38.

conducted at Stetler Avenue Crossing and, in particular, without the potential for hydrofracturing at the shallower depths near the HDD entry and exit locations.<sup>104</sup> Further, Sunbury's proposed HDD measures include monitoring of drilling pressures, contingency plans in the event of a failed drill, and an Inadvertent Release and HDD Contingency Plan to mitigate an inadvertent release of drilling fluids to upland areas and/or waterbodies caused by any of its HDDs at points along the pipeline route.<sup>105</sup>

94. We find that the above-described measures and requirements are adequate to ensure that Sunbury's HDD activities will not result in adverse effects on water resources. However, Sunbury also has filed a Well Monitoring Plan that outlines protocols and procedures for pre- and post-construction monitoring of water wells and springs within 500 feet of the construction work space that could be impacted by construction activities such as horizontal drilling or blasting or as the result of construction activities in karst sensitive areas.<sup>106</sup> Under this plan, if construction activities result in adverse effects on well, spring, or other potable water source, Sunbury must arrange for temporary potable water supplies and repair or replace the water source. Sunbury will be required to file a report within 30 days of completion of construction detailing any landowner complaints received regarding well quality and yield.

#### 4. Aquifers

95. The EPA comments raise concerns regarding the potential impacts of Sunbury's pipeline project, in particular impacts from the use and disposal of water used for hydrostatic testing, on sole source aquifers. As stated in the EA, no sole source aquifers are crossed by Sunbury's 34.4-mile long pipeline route.<sup>107</sup> While there are two sole source aquifers in Pennsylvania – the New Jersey Coastal Plain and Seven Valleys Aquifers – both aquifers lie approximately 100 miles from the closest area of the project, i.e., the southern end of the pipeline at the Hummel Delivery Station/Receiver where Hummel will receive its gas for use at the electric generation plant it is constructing near Shamokin Dam in Snyder County, Pennsylvania. Further, as explained in the EA, most excavation for the pipeline will be at depths shallower than the aquifers in the project area and not expected to affect groundwater. Any impacts from trench dewatering,

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<sup>104</sup> EA at 38.

<sup>105</sup> EA at 38.

<sup>106</sup> EA at 35. As Ms. O'Hara states that her drinking water well is approximately 120 feet from the pipeline route, Sunbury's Well Monitoring Plan will require monitoring of her well's yield and quality before, during, and after project construction.

<sup>107</sup> EA at 32.

including changes in the volume or rate of groundwater infiltration, would be short-term and temporary.<sup>108</sup> Sunbury will implement measures identified in its E&SCP, such as using equipment mats in areas of saturated soils, and de-compacting any soils compacted by pipeline construction activities prior to completion of restoration and revegetation, which will minimize impacts.

96. The EA identifies the sources and locations for water withdrawal for hydrostatic testing, the volumes to be withdrawn and used for testing, and the disposal locations for water used for hydrostatic testing.<sup>109</sup> The Commission's Erosion Control, Revegetation and Maintenance Plan, which is incorporated into Sunbury's E&SCP, requires Sunbury to maintain ambient flow during withdrawals; to locate manifolds outside wetlands and riparian areas to the greatest extent possible; and to maintain a 50-foot vegetated buffer between dewatering structures and adjacent waterbodies/wetlands areas.<sup>110</sup> Sunbury also will be required to comply with applicable measures in its E&SCP and all applicable local and state permit conditions. An environmental inspector will be onsite during any hydrostatic testing activities and will ensure that the screen intake hose minimizes the potential for entrainment of aquatic organisms when water is being withdrawn from water sources for use in hydrostatic testing.

97. We affirm the EA's findings that the requirements and conditions in Sunbury's E&SCP, SPCC Plan and Blasting Plan will sufficiently minimize impacts on groundwater resources and ensure that there are no impacts to any sole source aquifers.<sup>111</sup>

## 5. Surface Waters

98. The EPA questions whether 15 feet as a buffer between the construction right-of-way and waterbodies is sufficient. Sunbury's E&SCP requires that where the pipeline parallels a waterbody, Sunbury must maintain *at least* 15 feet of undisturbed vegetation between the waterbody (and any adjacent wetland) and the pipeline's construction right-of-way, except in situations where maintaining this offset would result in greater environmental impact.<sup>112</sup> While 15 feet is the minimum buffer stipulated in the E&SCP,

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<sup>108</sup> EA at 34.

<sup>109</sup> EA at 43, Table B-6.

<sup>110</sup> See Sunbury's August 21, 2015 Response to data request.

<sup>111</sup> EA at 13 and 35.

<sup>112</sup> Section V(B)(3)(c), FERC Wetland and Waterbody Construction and Mitigation Procedure, at 6, <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

Commission staff's review of Sunbury's filed alignment sheets show that Sunbury's buffer exceeds this minimum width along the pipeline segments where the pipeline will parallel a waterbody. Further, Sunbury's environmental inspector will ensure that an adequate buffer is maintained so no sedimentation from adjacent construction activities are affecting wetlands and waterbodies, which will be well marked with signs. We affirm the EA's conclusion that buffers will be adequately protected with implementation of these measures.

99. The EPA also comments that the project could negatively impact flood zones. As stated in the EA, the pipeline will cross 3.3 miles of Federal Emergency Management Agency (FEMA) Special Flood Hazard Areas located within the 100-year floodplain as identified on Flood Insurance Rate Maps.<sup>113</sup> However, no aboveground facilities will be located within any of the Special Flood Hazard Areas. Further, the soil compaction mitigation measures required by Sunbury's E&SCP will ensure that flooding does not cause the pipeline to become exposed and that the pipeline will remain buried sufficiently deep so as not to present safety risks. Sunbury will also comply with any state and local permit conditions applicable in the Special Flood Hazard Areas. In view of these considerations, we conclude that flooding is not expected to significantly affect the project facilities or the 100-year floodplain.

100. The EPA comments on how the project will affect impaired waters, i.e., waters that currently do not meet the water quality criteria for their designated use. The EA identifies eleven impaired waterbodies that will be crossed by the project.<sup>114</sup> Nine will be crossed via dry crossing method (dam and pump or flume), and two (the Chillisquaque Creek and the West Branch Susquehanna River) will be crossed using HDD. Sunbury's Unanticipated Discovery of Contaminated Soils Standard Operating Procedures (SOP)<sup>115</sup> requires that work be suspended immediately upon the discovery of contamination. At that point, identification of the threats, securing the area, notifications, discovery documentation protocol, remedial action planning, and record keeping occur as required in the SOP. The EA properly concludes that the crossing methods and implementation of the measures contained in the SOP and Sunbury's E&SCP will ensure that impacts on already impaired waters are minimized.

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<sup>113</sup> EA at 36.

<sup>114</sup> EA at 41. The EA states that the impaired waterbodies have water quality issues related to siltation, channelization and water/flow variability, and organic enrichment/low dissolved oxygen.

<sup>115</sup> Sunbury's July 1, 2015 Application at Appendix H.

101. The EPA also states that the EA should include a map and a description of the project's construction and operation impacts on Little Muncy Creek. The EA states that Little Muncy Creek is the only waterbody within the project area listed by the Pennsylvania Fish and Boat Commission as an Approved Trout Waters, which is considered Exceptional Value (EV) Wetlands. Little Muncy Creek is depicted on USGS topographic maps 1, 2, and 3 in Appendix A of the EA.

102. The EA concluded that effects on wetlands would be sufficiently minimized by the implementation of Sunbury's E&SCP, which incorporates the measures in the Commission's Wetland and Waterbody Construction and Mitigation Procedures (Procedures), including timing restrictions to protect spawning in waterbodies containing cold water fisheries.<sup>116</sup> Sunbury will avoid construction during sensitive periods by adhering to protective construction timing restrictions for cold water fisheries in the Little Muncy Creek.<sup>117</sup> In-stream work at this crossing would be performed between June 1 and September 30 for cold water fisheries, and Sunbury proposes to cross the Little Muncy Creek with a dry-ditch construction method to minimize impacts on sensitive aquatic resources within this waterbody. The Pennsylvania Fish and Boat Commission, a cooperating agency on this project, did not identify concerns with this method of crossing this waterbody or the minimization measures proposed. The EA correctly concludes that with Sunbury's implementation of these minimization measures, and measures contained in Sunbury's E&SCP and SPCC Plan, impacts on aquatic resources will be adequately minimized.

## 6. Wetlands

103. The EPA states that the EA should document the acres of wetlands temporarily lost, recreated, and permanently lost for each type of wetland, and clarify whether impacts on wetlands are permanent. The EA provides the milepost, county, wetland ID, wetland type, watershed, crossing width, amount of acreage affected by the construction and permanent rights-of-way, and the proposed pipeline and equipment crossing method for each wetland disturbed by the project.<sup>118</sup> The EA concludes that there would be no net loss of wetlands resulting from construction or operation of the project.<sup>119</sup> Wetlands temporarily impacted would be restored and allowed to revert to their pre-construction conditions. Permanent wetland impacts resulting from the project includes the

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<sup>116</sup> EA at 45.

<sup>117</sup> EA at 46.

<sup>118</sup> EA at Appendix G.

<sup>119</sup> EA at 45.

conversion of palustrine forested (PFO) wetlands to palustrine scrub-shrub (PSS) and palustrine emergent wetlands (PEM).<sup>120</sup>

104. The EPA also states that the EA should discuss in detail the type and amount of wetlands that will be converted, and include a discussion of wetland function. The EA's Wetland Impacts Summary for the project<sup>121</sup> summarizes the type of wetlands that will be impacted. Maintenance of the permanent right-of-way during operation of the proposed pipeline will result in permanent conversion of 0.5 acre of PSS and PFO wetlands to PEM wetlands. All PSS and PFO wetlands outside of the 30 feet required for operational maintenance would revert to PSS within a few years and/or would eventually revert to PFO following construction.<sup>122</sup>

105. Sunbury presents in its comments that permanent conversion impacts within the temporary and permanent right-of-way will be mitigated through the enhancement and preservation of an off-site wetland location, in consultation with the U.S. Army Corps of Engineers and the Pennsylvania Department of Environmental Protection. Sunbury intends to recreate the same function and value of the converted wetlands at the off-site wetland location. The potential off-site mitigation location is in Liberty Township, Montour County, and is approximately 2,000 feet to the southeast of milepost 20.2 of the proposed project.<sup>123</sup> The EA properly concludes that with the implementation of the mitigation measures contained in its E&SCP any measures required by Sunbury's Section 404 permit and 401 Certification (anticipated in mid-April or early May), impacts on wetlands will be adequately minimized and mitigated.

## 7. Aquatic, Wildlife, and Vegetation Resources

106. The EPA requests that Commission staff define the terms CWF, ATW, and WTW, as described in EA section 3.1.2. As stated in the EA on page 46, these terms are abbreviations for the fishery classifications: Cold Water Fisheries, Approved Trout Waters, and Wild Trout Waters, respectively. The EPA questions the adequacy of the EA waterbody analysis, and requests the linear feet of stream, type of habitat, and time of year for construction. The instream construction period, square feet affected, crossing width are provided in Appendix F of the EA. Although habitat is not specifically mapped, Sunbury provided an aerial map in its application that included field-delineated

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<sup>120</sup> *Id.*; see also Sunbury's August 21, 2015 Response to data request.

<sup>121</sup> EA at Appendix G.

<sup>122</sup> EA at 44.

<sup>123</sup> See Sunbury's August 21, 2015 Response to data request.

wetland habitat, proposed permanent easement, temporary workspace, additional temporary workspace, existing pipeline, proposed 20-inch pipeline, and milepost overlaid on top. Commission staff based its findings on the field-delineated data; therefore, the EA correctly concludes that impacts on waterbodies would be sufficiently minimized with the implementation of proposed crossing methods and timing restrictions,<sup>124</sup> and Sunbury's E&SCP, Inadvertent Release Plan, HDD Contingency Plan, and SPCC Plan.

107. The EPA states that the EA should discuss the prevention of invasive species introduction and disturbances. The EA notes that Sunbury would avoid the infestation and spread of invasive species to the greatest extent practicable by following the measures contained in its E&SCP.<sup>125</sup> The E&SCP states that Sunbury's environmental inspectors will verify the soils imported for agricultural or residential use have been certified as free of noxious weeds and soil pests, unless otherwise approved by the landowners. Sunbury's E&SCP requires Sunbury to restore and reseed with native species and monitor the proposed project area to control invasive species from spreading in the restored right-of-way. The E&SCP also includes measures for re-establishing herbaceous and/or woody species, controlling the invasion and spread of invasive species and noxious weeds, and monitoring the success of the revegetation and weed control efforts. In addition, restoration of all workspaces must be performed by personnel familiar with local horticultural and turf establishment practices and seeded in accordance with written recommendations from the local soil conservation authority.<sup>126</sup> Sunbury is required to monitor the right-of-way for in-kind vegetative species and invasive species. We find that impacts of invasive species will be sufficiently minimized with the implementation of the mitigation measures in Sunbury's E&SCP.

108. The EPA expresses concern about the distance between the project areas and Audubon Important Bird Areas. As discussed in the EA, no Important Bird Areas are located within the project area;<sup>127</sup> therefore, no impacts are expected.

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<sup>124</sup> Sunbury will adhere to the timing restrictions identified by the Pennsylvania Fish and Boat Commission for in-stream construction in approved trout waters and wild trout waters. EA at 15.

<sup>125</sup> EA at 49.

<sup>126</sup> See section V.D.3.b. of FERC's Upland Erosion Control, Revegetation, and Maintenance Plan.

<sup>127</sup> EA at 55.

109. The EPA comments that the EA should provide a map and analysis of whether the project will affect any forest cores and sensitive bird habitat, and quantify any loss to the ecosystem. The permanent right-of-way will be 50-foot-wide, with a 30-foot corridor maintained as herbaceous for pipeline safety. The remaining 20 feet of permanent right-of-way, and where applicable, 25-foot-length of temporary workspace, will be replanted with native tree seed mix and monitored for restoration, as part of Sunbury's Restoration Planting Plan. Sunbury has sited the pipeline adjacent to existing utility corridors where practicable – approximately 2.8 miles of the 34.4 mile-long route – to minimize habitat fragmentation. Migratory birds of conservation concern are listed in table B-8 of the EA.<sup>128</sup> As stated in the EA, Sunbury's Migratory Bird Treaty Act (MBTA) Plan includes seasonal restrictions of tree clearing outside of the nesting season and other minimization measures to reduce impacts on sensitive birds and their habitat. As discussed in the EA, the project will cross four areas identified as Core Habitat by the Pennsylvania Natural Heritage Program.<sup>129</sup> These Core Habitats would be avoided to the maximum extent possible. The EA properly concludes that impacts on sensitive birds and their habitats would be minimized with the implementation of measures contained in Sunbury's E&SCP and MBTA Plan.<sup>130</sup> On February 17, 2016, Sunbury filed a revised MBTA Plan, with the U.S. Fish and Wildlife Service's (FWS) February 16, 2016 letter approving the plan.<sup>131</sup>

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<sup>128</sup> EA at 56.

<sup>129</sup> EA at 57.

<sup>130</sup> EA at 55-59.

<sup>131</sup> See Sunbury's February 17, 2016 Filing with updated agency correspondence. The revised MBTA Plan includes measures that will minimize impacts on nesting birds, including conducting tree clearing prior to the prime nesting of birds of special concern (May 1 –August 31). If clearing is planned during this period, Sunbury will conduct nest surveys, and if an active nest of a bird of conservation concern is located, Sunbury will establish a 25-foot buffer zone where it will restrict construction until the nestlings have fledged from the nest. Sunbury also agrees to other FWS recommendations including using native, non-persistent grasses during restoration that will not out-compete tree and shrub species. Also, for woody vegetation restoration, Sunbury agrees to use a diverse mix of native plant species that is comparable to what currently exists within the project area. We find that our review of the revised MBTA Plan and the measures proposed would sufficiently protect migratory birds from construction.

110. In its February 16, 2016 concurrence letter, the FWS provided clarification on the federally protected northern long-eared bat.<sup>132</sup> The FWS final rule addressing protections for the northern long-eared bat became effective on February 16, 2016.<sup>133</sup> Sunbury's project is not located within 0.25 miles of a known northern long-eared bat hibernaculum or within 150 feet of a known, occupied maternity roost tree. As explained in the EA, tree clearing will be minimized within 1.5 miles from the centroid of roost trees for transmitted bats and 3 miles from the capture locations of the northern long-eared bats that were not tracked; clearing in these will be restricted to the period November 15 through March 31 when northern long-eared bats are likely to have migrated out of the area. The EA concluded that the project is not likely to adversely affect the northern long-eared bat, and noted that the FWS concurred in an October 14, 2015 letter.<sup>134</sup>

111. However, the FWS's final rule indicates that any incidental take that might result from tree removal is not prohibited and we update the EA conclusion that Sunbury's project will have no effect on the northern long-eared bat. The FWS concurred in its letter dated February 16, 2016, which supersedes concurrence provided in its letter dated October 14, 2015, regarding this species. The above final rule modifies the conclusions in our staff's EA. Therefore, with regard to tree clearing for this project, we clarify that the tree clearing avoidance window is no longer applicable for the northern long-eared bat. Further, tree clearing can commence after May 1 as long as provisions of the MBTA Plan are implemented.<sup>135</sup> Consultation under section 7 of the Endangered Species Act is now complete.

112. The EPA states that FWS' October 14, 2015 concurrence letter and other agency correspondence should be included in the EA. While the Commission's EAs generally do not include copies of agency consultation letters, such letters are filed in the public record in the dockets for proposed projects, and are available in the Commission's eLibrary system. This includes the October 14, 2015 concurrence letter from the FWS. In addition, the EA includes table A-7 providing the status of Sunbury's requested state and federal permits, approvals, and consultations at the time of issuance of the EA.

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<sup>132</sup> See Sunbury's February 17, 2016 Filing on updated agency correspondence.

<sup>133</sup> See 81 Fed. Reg. 1900 (2014).

<sup>134</sup> EA at 60.

<sup>135</sup> As noted above, May 1 – August 1 is the prime nesting of birds of special concern and Sunbury's revised MBTA Plan therefore provides that if tree clearing is planned during this period, it will conduct nest surveys, and if an active nest of a bird of conservation concern is located, Sunbury will establish a 25-foot buffer zone where it will restrict construction until the nestlings have fledged from the nest.

## 8. Noise

113. The EPA comments that the EA should list how far the noise sensitive areas (NSAs) are from the pipeline HDDs and at which mile marker. Further, the EPA recommends that the EA include the use of the NSA (e.g., residential or commercial), and indicate whether Sunbury has worked with the community to discuss potential noise impacts from the use of HDD. In addition, the EPA recommends that the EA include pipeline and meter station construction impacts on wildlife.

114. The EA lists the six NSAs that are within a half mile of where HDD activities will occur.<sup>136</sup> Sunbury has committed to mitigation measures, and these measures are discussed in the EA.<sup>137</sup> As recommended by the EA, Environmental Condition No. 13 in the Appendix of this order requires Sunbury to file an HDD noise mitigation plan, including measures to reduce the projected noise levels attributed to the drilling operations at the six NSAs with predicted noise levels above 55 A-weighted decibels (dBA).<sup>138</sup>

115. With regard to the impacts on wildlife from noise, research has demonstrated various reaction of wildlife to noise. However, specific studies to determine impacts on wildlife from typical pipeline construction noises have not been conducted. Research has recorded wildlife reaction to activities that could produce similar reactions from noise associated with pipeline construction activities, such as roadway traffic, airplanes, and blasting. With Sunbury's commitment to implement the mitigation measures described in the EA, we find that impacts on wildlife due to construction noise will be spatially localized, temporary, and of short duration, and that noise from operation of the project will not have a significant impact on local wildlife.

## 9. Cumulative Impacts

116. The EPA indicates that the cumulative noise analysis in section 9.5.7 of the EA should include the noise studies provided by the PennDOT regarding the Central Susquehanna Valley Transportation (CSV) Project, to appropriately determine that there will be no cumulative impacts from construction or operation of Sunbury's project

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<sup>136</sup> EA at 88, Table B-15.

<sup>137</sup> EA at 87. Mitigation measures include adding a noise barrier around the HDD equipment or offering compensation to the occupant(s) of a residence for temporary alternative accommodations on a case-by-case basis.

<sup>138</sup> As discussed in the EA, the EPA has indicated that 55 dBA protects the public from indoor and outdoor activity interference. EA at 86.

facilities.<sup>139</sup> The PennDOT prepared a final environmental impact statement (FEIS) for the CSVT Project addressing noise and mitigation measures in 2003.<sup>140</sup> In June 2015, PennDOT issued a Reevaluation of the FEIS for the CSVT Project, which stated that as part of the Final Design phase of the CSVT Project, PennDOT is completing a full reevaluation of the noise impact analysis.<sup>141</sup> The June 2015 Reevaluation stated that the only noise analysis completed to date was based on old modeling methodology, old design, and an outdated noise policy. Therefore, since PennDOT is completing a reevaluation of the noise analysis, we do not find it necessary at this time to include the previous noise studies.

117. The EPA also states that the cumulative impacts analysis on wetlands in section 9.5.2 should depict the loss and conversion of wetlands within each of the seven hydrologic unit code (HUC) 10 watersheds in the project area, and indicate whether the projects affect similar wetland and forested areas. The EPA further stated that since about 4.7 miles of Sunbury's pipeline route is in close proximity to the CSVT Project, the EA should analyze the impact to wetland and water resources by the two projects collectively.

118. The EA states that the CSVT Project is the only project identified in the same region of influence that would impact any water resources as Sunbury's pipeline project. In response to PennDOT's comments that the CSVT Project analysis was recently revised, Commission staff conducted an online search of the status of the CSVT Project's schedule to examine if the CSVT Project construction activities will occur at the same time as construction of the Sunbury pipeline. Based on Sunbury's recent filings, Sunbury plans to construct its pipeline in 2016 after Commission authorization for an in-service target date of 2017. PennDOT clarifies that the Sunbury pipeline crosses the Pennsylvania Route 61 Connector, which is part of the Southern Section of the CSVT Project that the EPA refers to in its comment. PennDOT also clarifies that the Sunbury

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<sup>139</sup> The CSVT Project is a proposed new four-lane highway that extends for 12-13 miles from the existing Selinsgrove Bypass in Monroe Township, Snyder County, to the interchange between Pennsylvania State Route 147 and Pennsylvania State Route 45 in West Chillisquaque Township, Northumberland County. EA at 104.

<sup>140</sup> CSVT Project, *Final Environmental Impact Statement and Section 404 Permit Evaluation*, at IV-55 – IV-82 (July 2003), <http://www.csvt.com/resources/pdfs/final-eis-volume-1.pdf>. On February 8, 2016, PennDOT provided comments on the EA updating and clarifying information that was included in the EA regarding the CSVT Project.

<sup>141</sup> CSVT Project, *Reevaluation No. 2 of Final Environmental Impact Statement and Record of Decision*, at 56 (June 2015), [http://www.csvt.com/resources/pdfs/FEIS\\_Reevaluation\\_No2.pdf](http://www.csvt.com/resources/pdfs/FEIS_Reevaluation_No2.pdf).

pipeline is anticipated to be constructed prior to the CSVT Project. The CSVT construction schedule, as shown on PennDOT's website, is a long-term construction project with several aspects still in development. The construction activities of the Southern Section of the CSVT Project will occur over several years, with earthwork beginning in 2019, and is targeted to be completed in 2024.

119. The EA states that the CSVT Project's Southern Section is closest to Sunbury's project from milepost 29.6 to milepost 34.3 of Sunbury's pipeline route. The EA states that since the CSVT Project's earth disturbance activities are projected to begin about two years after Sunbury's project activities, including after restoration and revegetation are completed, the cumulative impacts on water resources and wetlands would not overlap; therefore, any cumulative impacts would be considered minor.<sup>142</sup> Because Sunbury will implement appropriate measures to minimize and avoid impacts on wetlands and waterbodies, and that two years of restoration and revegetation progress are anticipated before any earthmoving activities for the CSVT Project, we conclude that the added cumulative impacts on affected resources of the two projects will be minor.

120. In PennDOT's comments on the EA, it indicates that based on the most recent plans provided by Sunbury to the PennDOT, Sunbury adjusted their alignments so that the pipeline will be eight feet below the proposed highway grade in order to avoid future conflict during the construction of the CSVT Project.<sup>143</sup> However, the PennDOT states that before making any changes in the location of the pipeline as shown on those plans, Sunbury should coordinate with the PennDOT to ensure that Sunbury's changes do not interfere with construction of the CSVT Project or result in significant utility relocation costs and/or disruptions to Sunbury's service. Environmental Condition No. 5 allows Sunbury to make minor route variations to its pipeline route alignment, should it require additional adjustments during its final engineering design. Any minor route variation would require landowner concurrence, i.e., the PennDOT, and appropriate environmental clearances for review and written approval by the Director of OEP.

121. Also, the PennDOT recommends that the pipeline must meet the requirements of PennDOT's Design Manual Part 5 for a utility crossing, to place marker tape three feet above the pipeline and that all utility crossings within the PennDOT right-of-way or that cross accesses to a state-owned road will require a Highway Occupancy Permit. In addition, PennDOT requires that all utility crossings within its right-of-way be bored, and that open-cut crossing will only be evaluated if proper engineering justification

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<sup>142</sup> EA at 106.

<sup>143</sup> PennDOT's February 8, 2016 Filing, at 2.

accompanies the Highway Occupancy Permit Application. As stated in the EA,<sup>144</sup> any utility crossings would be subject to state requirements.

122. The EPA comments that a cumulative impact map or figure should be included outlining the locations of the projects from the EA's Table B-23<sup>145</sup> to help the reader better understand how the surrounding projects and the Sunbury project will affect the environment. For the cumulative impacts analysis, Commission staff considered the region of influence to be the entire project area geography, which includes portions of Lycoming, Montour, Northumberland, Union, and Snyder Counties in Pennsylvania.<sup>146</sup> The analysis identified 28 notable recent or proposed projects in the project's region of influence. Due to the number of projects listed in Table B-23, a map showing all the project locations would be too congested to be helpful to the reader of the EA; therefore, a map was not included. Further, while the EA discusses the potential for Sunbury's project and other projects in the region of influence as identified in Table B-23 to have cumulative impacts on water, wildlife, air and other resources,<sup>147</sup> the EA concludes that the cumulative impacts of Sunbury's project on any these resources when added to the impacts from other identified projects would be minimal.<sup>148</sup>

123. The EPA comments that the EA did not include any analysis of the cumulative impacts from Sunbury's project and the new Hummel Station to which Sunbury's pipeline will transport gas for use as fuel to generate electricity. The Hummel Station is identified as a major project associated with the project area, and the Hummel Station is included in the EA's cumulative impacts analysis.<sup>149</sup> As stated in the EA, the Hummel Station is not subject to the Commission's jurisdiction, but is subject to permit requirements at the federal and state level.<sup>150</sup> Because construction of this non-jurisdictional facility will occur at an existing industrial site, the cumulative impacts discussion in the EA focused on air quality. The EA states that "[t]he emissions from

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<sup>144</sup> EA at 89.

<sup>145</sup> EA at 100-103.

<sup>146</sup> EA at 158.

<sup>147</sup> EA at 104-112.

<sup>148</sup> EA at 112.

<sup>149</sup> EA at 104.

<sup>150</sup> EA at 105. As discussed above, the Hummel Station will be located at the site of a retired coal-fired electric generation plant.

construction activities for the Project and other projects in the region would result in short-term emissions that would be localized to each project area; therefore, construction emissions are not expected to have a significant cumulative impact on regional air quality.”<sup>151</sup> Since air emissions associated with the pipeline will be temporary and no operational emissions are expected, the EA correctly concludes that the temporary nature of emissions generated during construction of the project will not contribute to cumulative impacts on regional air quality as a result of operation.

## 10. Greenhouse Gases and Climate Change

124. The EPA comments that the EA should include information on the Greenhouse Gas (GHG) emissions produced by the project from sources that operate the pipelines (e.g. compressor stations, even if not newly constructed), and other potential sources of GHG emissions from the project. Because the Hummel power plant will be one of the delivery points for Sunbury’s pipeline, the EPA recommends estimating emissions from the power plant, as part of secondary and cumulative impacts. Additionally, the EPA recommends that the EA include the impacts that forest loss has on carbon sequestration.

125. As discussed in the EA the GHG emissions have been analyzed and quantified.<sup>152</sup> Operational emissions including fugitive pipeline emissions are also provided in Table B-14 of the EA. In addition, the Pennsylvania Department of Environmental Quality (DEQ), Bureau of Air Quality provided a comparison of the potential-to-emit emissions between the coal-fired boilers that have been retired at the site of the Hummel Station and the natural gas-fired turbines that will be operated at the new Hummel Station. As shown below, the potential emissions associated with the Hummel Station would be significantly lower than the coal-fired boilers. On September 26, 2014, and May 26, 2015, the Pennsylvania DEQ issued plan approvals for the Hummel Station. The Hummel Station received an air permit from the Pennsylvania Department of Environmental Protection on May 18, 2015, and is scheduled to commence construction in 2017. The Hummel Station will provide 180 percent more power than the coal plant it replaced and significantly reduce GHG emissions.

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<sup>151</sup> *Id.*

<sup>152</sup> *See* section 7 of the EA at 79 – 85.

<b>Potential-To-Emit (Tons per Year)</b>		
<b>Pollutant</b>	<b>Coal-Fired Boilers</b>	<b>Natural Gas-Fired Turbines</b>
<b>Nitrogen Oxide</b>	<b>13,114</b>	<b>230</b>
<b>Carbon monoxide</b>	<b>340</b>	<b>389</b>
<b>Volatile organic compounds</b>	<b>41</b>	<b>72</b>
<b>Sulfur Oxide</b>	<b>65,391</b>	<b>60</b>
<b>PM/PM10/PM2.5</b>	<b>1,822</b>	<b>197</b>
<b>Formaldehyde</b>	<b>0.2</b>	<b>4.1</b>
<b>All Hazardous air pollutants</b>	<b>918</b>	<b>15</b>
<b>Carbon dioxide equivalents</b>	<b>4,248,389</b>	<b>2,949,212</b>
<b>PM/PM10/PM2.5 -- Particulate matter/particulate matter sized 10 microns and smaller/particulate matter sized 2.5 microns and smaller</b>		

126. Carbon sequestration is the process through which plant life removes carbon dioxide from the atmosphere and stores it in biomass. The project would impact approximately 71.7 acres of forested land, and 9.5 acres of this forested land would revert back to forest. Young, fast-growing trees in particular will remove more carbon dioxide from the atmosphere than they will release. While there would be a slight long-term effect of reduced carbon sequestration due to removal of trees from the permanent right-of-way, the temporary right-of-way would revert back to pre-existing conditions. This young vegetation of the restored temporary right-of-way would continue to perform the carbon sequestration process. The diminished carbon sequestration ability of the permanent right-of-way would be reduced; however, we do not believe the impact of the project would have significant impacts on cumulative carbon sequestration.

127. The EPA comments that the EA should include an estimate of the GHG emissions associated with the project, qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions. In addition, the EPA also recommends that the analysis address the appropriateness of considering changes to the design of the proposal to incorporate GHG reduction measures and resilience to foreseeable climate change. Further, the EPA recommends that the EA should make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions or to adapt to climate change impacts. No operational emissions are proposed since Sunbury's

project will not include a compressor station. Therefore, the implementation of design measures to reduce and mitigate GHG emissions from construction and operation of Sunbury's pipeline project is not necessary since the primary emissions associated with this project will be construction related emissions that are temporary and intermittent.

128. The EPA comments that the GHG emissions associated with Sunbury's proposal and those of alternatives should be quantified and compared. If the emissions are less than 25,000 metric tons of carbon dioxide equivalent (CO<sub>2e</sub>) emissions/year, the EPA states a qualitative estimate should be provided. In addition to estimating emissions caused by Sunbury's project, the EPA recommends estimating the reasonably foreseeable emissions from activities indirectly caused by the proposal, which it states would include the proposed Hummel Station that will be served by the Sunbury's pipeline.

129. The GHG emissions were provided in table B-13 of the EA.<sup>153</sup> The primary emissions associated with the project would be temporary emissions during construction and fugitive emissions during operation of the pipeline. The total construction and operational emissions would be below 25,000 CO<sub>2e</sub> and per the Council on Environmental Quality guidance there is no need to include a qualitative estimate. However, our staff included these GHG emissions in the EA for informational purposes. In addition, Sunbury's Fugitive Dust Control Plan<sup>154</sup> includes measures to reduce fugitive emissions during construction, such as the application of water on dirt roads, and the grading of roads.

130. In addition, the EPA comments that the estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, the EPA recommends that consideration should be given to whether, and to what extent, the impacts may be exacerbated by expected climate change in the action area.

131. Sunbury's project 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 facilities exceed 25,000 metric tons per year of carbon dioxide equivalents, Sunbury will be required to report GHG emissions to the EPA under the Mandatory Reporting Rule. Since the project would only have construction emissions

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<sup>153</sup> EA at 84. The EPA recommended the estimate of reasonably foreseeable emissions should include the existing Sunbury coal-fired power plant. As discussed, Sunbury has already retired the coal-fired power plant facilities.

<sup>154</sup> EA at Appendix C.

which are temporary and intermittent, the EA concluded that the project will not contribute significantly to climate change. For these reasons, we do not find it necessary to impose GHG emission mitigation measures.

132. The EPA comments that an alternative analysis should, as appropriate, consider practicable changes to the proposal to make it more resilient to anticipated climate change. EPA further recommends that the Commission require commitments to implementation of reasonable mitigation measures that would reduce or eliminate project-related GHG emissions. Based on the discussion presented earlier and based on the scope of this project, we conclude that an alternative analysis and mitigation measures to reduce or eliminate GHG emissions would not be necessary and would not alter the environmental analysis or conclusions presented in the EA.

133. The EPA comments that the EA, in order to assist with identification of potential project impacts that may be exacerbated by climate change, and to inform consideration of measures to adapt to climate change impacts, should include a discussion on climate change and ongoing reasonable foreseeable climate change impacts relevant to the project based on U.S. Global Change Research Program (USGCRP) assessments. Climate change was addressed in the cumulative impacts analysis of the EA, including a discussion on some of the USGCRP findings.<sup>155</sup> Many of the analyses on climate change presented in the EA were based on these findings, which identifies the potential impacts on the environment attributed to climate change.

## **11. Miscellaneous Comments**

134. The EPA comments that the EA should clarify if there are any state public parks or recreation areas that will be affected by the project either from operation or construction. As stated in the EA,<sup>156</sup> there are no states or public parks in the vicinity of the project that will be affected by the proposed project.

135. On January 18, 2016, John Grove commented on the safety of the public while the pipeline is under construction. Mr. Grove expressed concern that the number of people at the construction site will impact local emergency management, and recommends that Sunbury coordinate with the local public safety officials. In addition, Mr. Grove adds that construction operations will have impacts on traffic and roads due to the anticipated machinery and supplies being trucked and delivered to the construction sites. The EPA also comments that the EA should include a better description of the use of roads and impacts from construction and operation.

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<sup>155</sup> EA at 110.

<sup>156</sup> EA at 67.

136. The EA states that Sunbury will implement an Emergency Response Plan (ERP) for the Sunbury pipeline system.<sup>157</sup> Some of the stipulations in the ERP include the role of local field headquarters and company personnel, local police, and fire authorities to contact; roles of supervisors, and support personnel during an emergency; procedures to maintain communications between local fire, police, and government authorities; procedures for securing additional help from non-company resources if needed; and requirements for logging emergency events and responding to company and regulatory authorities. In addition, Sunbury commits to provide the appropriate training to local emergency service personnel and first responders before the pipeline is placed in service. Sunbury will continue to develop and expand its relationships with public authorities, emergency first responders, local utilities, and adjacent landowners to proactively address and coordinate emergency procedures for all locations affected by the project.

137. Regarding impacts on traffic and roads, the EA states that Sunbury will develop a Traffic Management Plan to minimize impacts on roads and traffic.<sup>158</sup> The Traffic Management Plan will include number of trips per truck, size of equipment, impacts on traffic, including temporary road closures and detours, and proposed mitigation. This plan will be coordinated with local officials and include all road crossing permitting requirements. Construction of major road crossings and most local road crossings will be accomplished using conventional boring techniques. This method will be utilized specifically to minimize disturbance on existing roadways and decrease the effect on traffic patterns. Therefore, we support the EA's conclusion that the project will not have significant impacts on transportation, and we are including a new requirement as Environmental Condition No. 17, that Sunbury provide its final Traffic Management Plan, prior to construction.

138. The EPA also comments that the EA should describe the analysis done for environmental justice communities of concern; incorporate census block data of the affected areas and the comparison to statewide population; and that the cumulative analysis should consider an increase of pressure to environmental justice communities and loss of habitat. The EA concludes no significant adverse impacts are expected in the project areas regarding pollution, habitat, economy, and employment sectors, and that the project is expected to enhance the economics of the affected areas with the additional job opportunities.<sup>159</sup> Therefore, we conclude that including the census block data, as suggested, is unnecessary.

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<sup>157</sup> EA at 89-98.

<sup>158</sup> EA at 78.

<sup>159</sup> EA at 78.

139. The majority of impacts associated with the project would result from construction activities, and will be temporary. All property owners affected by the project received the Commission notices, during both the pre-filing review and following the application submittal, about the project without any distinction based on minority or income statuses. The distribution list for the EA included all affected landowners,<sup>160</sup> local newspapers and libraries; local, state and federal agencies, and non-government organizations, such as environmental groups who may be interested in the proposal. In addition, any person who provided scoping comments in this proceeding was also included on our staff's environmental mailing list. We concur with the EA's conclusion that the construction and operation of the project would not have a significant adverse impact on the local population.

## 12. Environmental Conclusion

140. Based on the analysis in the EA, as supplemented in this order, we conclude that if Sunbury constructs and operates the Sunbury Pipeline Project in accordance with Sunbury's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

141. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.<sup>161</sup>

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

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<sup>160</sup> See 18 CFR §157.6(d) (2015).

<sup>161</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 regulations 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 System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to UGI Sunbury, LLC (Sunbury) authorizing it to construct and operate the Sunbury Pipeline Project, as described in the application and conditioned herein.

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

(C) A blanket transportation certificate is issued to Sunbury under Subpart G of Part 284 of the Commission's regulations.

(D) The certificate issued in Ordering Paragraph (A) is conditioned on:

- (1) Sunbury's completion of the authorized construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Sunbury's compliance with all applicable Commission regulations including, but not limited to, Part 284 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Sunbury's compliance with the environmental conditions listed in the appendix to this order; and
- (4) Sunbury's execution of firm contracts, prior to commencement of construction, for the capacity levels and terms of service represented in its precedent agreements supporting its application.

(E) Sunbury's initial rates and the language contained in its pro forma tariff are approved, as conditioned and modified in this order.

(F) Sunbury is directed to file actual tariff records implementing the changes discussed in the body of this order within 30 days of the date of this order. That filing should be made as a compliance filing under filing code type 580 and will be assigned an RP docket. It will be processed separately from the instant certificate proceeding in Docket No. CP15-525-000.

(G) Within three years after commencing service, Sunbury must make a filing, as discussed herein, to justify its existing cost-based firm and interruptible recourse rates. Sunbury's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Sunbury is advised to include as part of the eFiling description, a reference to Docket No. CP15-525-000 and the cost and revenue study.<sup>162</sup>

(H) At least 30 days, but not more than 60 days, prior to the date the project facilities go into service, Sunbury must file the negotiated rate agreement with Hummel or any other shipper and an executed copy of the service agreement reflecting all non-conforming language, and the tariff record identifying the agreement as a non-conforming agreement consistent with Section 154.112 of the Commission's regulations.

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

(J) The late motion to intervene is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>162</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047 at P 17.

## APPENDIX A Environmental Conditions

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

1. Sunbury shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Sunbury must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Sunbury shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel would be informed of the EIs' authority and have been or would 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**, Sunbury 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.

Sunbury's exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Sunbury's right of eminent domain granted under Natural Gas Act Section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for pipeline to transport a commodity other than natural gas.

5. Sunbury 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 and contractor 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's Upland Erosion Control, Revegetation and Maintenance Plan, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Sunbury shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Sunbury must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Sunbury would implement the construction procedures and mitigation measures described in its application and supplements (including responses

- b. to staff data requests), identified in the EA, and required by this Order;
  - b. how Sunbury would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Sunbury would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel and specific portion of Sunbury's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Sunbury would follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (i) the completion of all required surveys and reports;
    - (ii) the environmental compliance training of onsite personnel;
    - (iii) the start of construction; and
    - (iv) the start and completion of restoration.
7. Sunbury 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. 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
  - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Sunbury 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 would also

be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Sunbury'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 Sunbury from other federal, state, or local permitting agencies concerning instances of noncompliance, and Sunbury's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Sunbury shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Sunbury must receive written authorization from the Director of OEP **before commencing service on the project**. Such authorization would 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**, Sunbury shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions Sunbury has complied with or would 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. **Sunbury shall not begin construction of facilities** and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
- a. Sunbury files with the Secretary:
    - (1) remaining cultural resources survey report(s) and addendum(s);
    - (2) site evaluation report(s) and avoidance/treatment plan(s), as required; and
    - (3) comments on the cultural resources reports, addendums and plans from the Pennsylvania Historic Preservation Officer.
  - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
  - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Sunbury in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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

13. **Prior to construction of the horizontal directional drill activities at Chillisquaque Creek, Susquehanna River, and Stetler Avenue**, Sunbury shall file with the Secretary, for the review and written approval by the Director of OEP, an horizontal directional drill noise mitigation plan to reduce the projected noise level attributable to the drilling operations at noise sensitive areas 1 through 6 with predicted noise levels above 55 A-weighted decibels.
14. **Prior to construction**, Sunbury shall file with the Secretary, for review and written approval of the Director of OEP, a revised set of residential construction plans that include individual plans for the two residences at mileposts 31.7 and 34.33, and documentation that demonstrates Sunbury’s consultation with these affected landowners regarding the residential construction plans.
15. **Prior to construction**, Sunbury shall file with the Secretary, for review and written approval by the Director of OEP, a plan describing how it will implement the drainage mitigation and restoration measures required in Section 10.1.1 of its Sunbury’s Erosion and Sedimentation, Control Plan to cross the Litchards’ property.
16. **Prior to construction of the pipeline between mileposts 30 and 32**, Sunbury shall file with the Secretary, for review and written approval of the Director of OEP, its final alignment on the Gray Family property incorporating Route

Variation 41B with modification to avoid the Grays' planned poultry facilities, as indicated on the map filed by Mr. Gray with his January 28 and February 1, 2016 comments, between mileposts 30.6 and MP 31.2. Sunbury shall include documentation of its consultation with the Gray Family regarding the revised alignment and file and its updated alignment sheets submitted with its Implementation Plan.

17. **Prior to construction**, Sunbury shall file its final Traffic Management Plan with the Secretary for the Project.