

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

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP15-118-000

ORDER ISSUING CERTIFICATE

(Issued July 7, 2016)

1. On March 23, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) 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 a certificate of public convenience and necessity to construct and operate the Virginia Southside Expansion Project II (VSEP II), which is intended to provide 250,000 dekatherms per day (Dth/day) of incremental firm transportation service for Virginia Power Services Energy Corporation, Inc. (Virginia Power).
2. For the reasons discussed below, the Commission will authorize Transco's proposal, subject to certain conditions.

**I. Background and Proposal**

3. Transco is a natural gas company, as defined by section 2(6) of the NGA,<sup>3</sup> engaged in the transportation of natural gas in interstate commerce. It is a limited liability company organized and existing under Delaware law. Transco's system extends from Texas, Louisiana, Mississippi, Alabama, and the offshore Gulf of Mexico area, through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

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

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

<sup>3</sup> 15 U.S.C. § 717a(6) (2012).

4. Transco proposes to construct and operate the proposed project to provide 250,000 Dth/day of incremental firm transportation service to a delivery point at the end of its proposed 4.9-mile-long Greenville Lateral to serve a new electric power plant to be constructed in Greenville County, Virginia, by Virginia Power's affiliate, Virginia Electric and Power Company (VEPCO). The 250,000 Dth/day of firm service would include 165,000 Dth of service from Transco's Zone 6 Station 210 Pooling Point on Transco's mainline in Mercer County, New Jersey, and 85,000 Dth of service from its Zone 5 Station 165 Pooling Point in Pittsylvania County, Virginia.

5. Specifically, Transco proposes the construction and operation of the following new facilities and modifications to existing facilities:

- 1) the Greenville Lateral, consisting of approximately 4.19 miles of 24-inch-diameter pipeline extending from milepost 5.2 on Transco's existing Brunswick Lateral in Brunswick County, Virginia, to VEPCO's proposed power plant in Greenville County, Virginia;
- 2) one 25,000 horsepower (hp) electric-driven compressor unit at Transco's existing Compressor Station 185 in Prince William County, Virginia;
- 3) two 10,915 hp gas-driven compressor units, three bays of cooling equipment, and the re-wheeling of two existing compressor units at Transco's existing Compressor Station 166 in Pittsylvania County, Virginia;
- 4) a new delivery meter station and gas heaters at the terminus of the Greenville Lateral at VEPCO's Greenville power plant;
- 5) modifications to odorization/deodorization facilities at Transco's Compressor Station 140 in Spartanburg County, South Carolina, and to valve settings and meter stations between Compressor Station 140 and Transco's Tryon Lateral and on Transco's mainline in North Carolina and South Carolina; and
- 6) various related appurtenances underground facilities and aboveground facilities such as valves and valve operators, launchers, and receivers.

Transco estimates that the project will cost approximately \$190.8 million.

6. On May 30, 2014, Transco executed a binding precedent agreement with Virginia Power for 250,000 Dth/day of firm transportation service using the capacity to

be created by VSEP II.<sup>4</sup> Subsequently, Transco held an open season from January 2, 2015 through January 30, 2015; however, Transco received no other bids for firm service. The precedent agreement with Virginia Power is for firm transportation service under Transco's Rate Schedule FT for an initial 20-year term.

7. Transco proposes an initial incremental recourse reservation charge under its existing Rate Schedule FT for firm service utilizing VSEP II capacity.<sup>5</sup> Transco proposes to provide any interruptible service using the expansion capacity at its generally applicable rate under existing Rate Schedule IT, and to apply its generally applicable system fuel retention and electric power rates under its existing Rate Schedules FT and IT for firm and interruptible services using the expansion capacity. Transco also requests a predetermination authorizing incremental rate treatment for the combined costs associated with VSEP II and Transco's previously-authorized Virginia Southside Expansion Project (VSEP I),<sup>6</sup> and approval to make a limited NGA section 4 rate filing for this purpose.

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

8. Notice of Transco's application was issued on April 1, 2015, and published in the *Federal Register* on April 7, 2015.<sup>7</sup> The notice established April 22, 2015, as the deadline for filing comments and interventions. The parties listed in Appendix A filed timely, unopposed motions to intervene, which were granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure.<sup>8</sup> Appendix A also includes the North Carolina Utilities Commission and the New York State Public Service Commission (collectively, State Commissions), which jointly filed a timely notice of intervention that was granted by operation of Rule 214(a)(2).<sup>9</sup>

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<sup>4</sup> The precedent agreement was amended on June 4, 2014 and June 30, 2014.

<sup>5</sup> Virginia Power, however, has agreed to a negotiated rate for its firm service.

<sup>6</sup> *Transcontinental Gas Pipe Line, LLC*, 145 FERC ¶ 61,152 (2013) (*Transco VSEP I*).

<sup>7</sup> 80 Fed. Reg. 18,613.

<sup>8</sup> 18 C.F.R. § 385.214(c)(1) (2015).

<sup>9</sup> 18 C.F.R. § 385.214(a)(2) (2015).

9. On January 12, 2016, Sierra Club and Appalachian Mountain Advocates (collectively, Sierra Club) jointly filed a late motion to intervene, and comments. We find that the late intervenors have demonstrated an interest in the proceeding and that granting intervention at this stage will not cause undue delay or disruption, or otherwise prejudice the applicant or other parties. Accordingly, we grant the motion for late intervention.<sup>10</sup>

10. The State Commissions protest Transco's application. On May 12, 2015, Transco filed an answer to the protest. On May 27, 2015, the State Commissions filed an answer to Transco's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers,<sup>11</sup> our rules provide that we may, for good cause, waive this provision.<sup>12</sup> We will admit Transco's and the State Commissions' answers because they have provided information that has assisted us in our decision-making process.

11. The State Commissions take issue with the pre-tax return used by Transco in calculating its proposed incremental recourse rates in this proceeding and in its applications for its proposed Dalton Expansion Project in Docket No. CP15-117-000 and Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions request that the three certificate applications be partially consolidated to consider the appropriate pre-tax return in a full evidentiary hearing. The State Commissions' protest is addressed below.

12. Sierra Club's comments relating to the scope of the environmental analysis for Transco's VSEP II proposal were addressed in the Environmental Assessment (EA) prepared for the project, as discussed below.

### **III. Discussion**

13. Since Transco'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.

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<sup>10</sup> 18 C.F.R. § 385.214(d) (2015).

<sup>11</sup> 18 C.F.R. § 385.213(a)(2) (2015).

<sup>12</sup> 18 C.F.R. § 385.101(e) (2015).

**A. Certificate Policy Statement**

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>13</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. 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.

16. As noted 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. Transco proposes an incremental recourse rate for services using expansion capacity created by VSEP II. However, while the rate was designed to recover the cost of service associated with the project, under the negotiated agreement with the project shipper, the revenue during the first year of service would be

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<sup>13</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

less than the associated cost of service.<sup>14</sup> Therefore, as discussed below, we will not grant a presumption supporting rolling the VSEP II costs into either a single incremental rate recovering both the VSEP I and VSEP II costs, as requested by Transco, or into Transco's generally applicable system rates. If Transco seeks rolled-in rate treatment for costs associated with the VSEP II expansion capacity in any future rate proceeding, it will have the burden of proof to demonstrate that the project has resulted in system-wide benefits sufficient to justify rolled-in rate treatment.<sup>15</sup> Because we are denying the presumption, we find that there is adequate assurance that none of Transco's existing customers will subsidize the project, and the Certificate Policy Statement's threshold requirement of no subsidization is satisfied.

17. We find the proposed expansion will have no effect on service to Transco's existing customers. Further, no pipelines or their captive customers filed adverse comments regarding Transco's proposal. Thus, we find that Transco's proposed project will not adversely affect its existing customers or other pipelines and their captive customers.

18. We also find that Transco has routed and designed the VSEP II to have minimal adverse impact on landowners and communities. Proposed new pipeline construction is limited to the 4.19-mile-long Greenville Lateral, of which approximately 71.5 percent will be co-located with existing road and/or utility rights-of-way. While the construction activities will temporarily affect 180.1 acres of land, Transco will permanently maintain only approximately 29.3 acres of land for operation of the project facilities.

19. VSEP II will enable Transco to provide 250,000 Dth/day of incremental firm transportation service for Virginia Power, which has entered into an agreement for all of the expansion capacity in order to meet the gas requirements of the 1,580-megawatt electric generation plant that VEPCO is constructing in Greenville County, Virginia. In view of the benefits that will result from the project, with no adverse impacts on Transco's existing customers and other pipelines and their captive customers and minimal impacts on landowners and surrounding communities, the Commission finds that Transco's proposal satisfies the Certificate Policy Statement. Based on this finding

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<sup>14</sup> In deciding whether to grant a presumption of rolled-in rate treatment in a certificate proceeding, the Commission compares the cost of the project to the revenues that would be generated using actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the maximum recourse rate). See *Gulf South Pipeline Co., LP*, 155 FERC ¶ 61,287, at P 28 (2016).

<sup>15</sup> See, e.g., *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382, at P 44 (2015), and *Gulf Crossing Pipeline Company LLC*, 144 FERC ¶ 61,196, at P 16 (2013).

and the environmental review for Transco's proposed project, as discussed below, the Commission further finds that the public convenience and necessity requires approval and certification of Transco's proposal under section 7 of the NGA, subject to the environmental and other conditions in this Order.

## **B. Rates**

### **1. Pre-tax Rate of Return**

20. In their protest, the State Commissions take issue with Transco's proposed use of a pre-tax return of 15.34 percent in calculating its proposed incremental recourse rates in its applications for its VSEP II proposal in this proceeding, its proposed Dalton Expansion Project in Docket No. CP15-117-000, and its proposed Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions acknowledge Transco's use of the specified pre-tax return most recently approved in a section 4 rate case is consistent with Commission policy, but they emphasize that rate case was fifteen years ago. They argue the incremental recourse rates approved in these proceedings should take into account the significant changes in financial markets since then.<sup>16</sup> The State Commissions assert that the pre-tax return of 15.34 percent accounts for approximately half of Transco's proposed cost of service in these proceedings,<sup>17</sup> and their comments included a discounted cash flow (DCF) analysis, which they contend reflects current market conditions and reflects a median rate of return on equity (ROE) of 10.95 percent for natural gas pipelines.<sup>18</sup> They request partial consolidation of these proceedings to consider the appropriate pre-tax return in a full evidentiary hearing.

21. The State Commissions argue that recent Commission orders provide valuable perspective indicating that Transco's proposed 15.34 percent pre-tax return is not reasonable. They reference the 2015 order where the Commission relied on a DCF analysis for a proxy group of pipelines based on a six-month period ending March 31, 2011, to limit Portland Natural Gas Transmission System's ROE to 11.59 percent, the top

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<sup>16</sup> Transco's last section 4 rate case in which a specified rate of return was used in calculating Commission-approved rates was in Docket No. RP01-245-000, *et al.* A letter order issued in that docket on July 23, 2002, accepted a partial settlement resolving cost classification, cost allocation, and rate design subject to certain reservations and adjustments, and revising Transco's generally applicable rates. *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085, at P 2 (2002).

<sup>17</sup> State Commissions' April 22, 2015 Protest in Docket No. CP15-118-000, *et al.*

<sup>18</sup> Preliminary Pipeline DCF Analysis Exhibit to State Commissions' Protest.

of the range of reasonable returns for which the median ROE was 10.28 percent.<sup>19</sup> The State Commissions also point to the Commission's 2013 orders that limited the ROEs for El Paso Natural Gas Company and Kern River Gas Transmission Company to 10.55 percent and 11.55 percent, respectively.<sup>20</sup>

22. Transco's answer emphasizes that this proceeding and the proceedings on its proposed Dalton and Atlantic Sunrise projects are section 7 certificate proceedings, not section 4 rate cases, and that its proposed recourse rates in these certificate proceedings will be initial section 7 rates for incremental services using new expansion capacity. Transco further asserts its proposed initial section 7 recourse rates are consistent with Commission policy in section 7 proceedings, in that they are appropriately designed to recover each project's incremental cost of service.<sup>21</sup> In the State Commissions' answer to Transco's answer, they contend that when the Commission grants a pipeline company negotiated rate authority, it relies on the availability of cost-based recourse rates to prevent the pipeline from exercising market power by ensuring that shippers will have the option of choosing to pay cost-based recourse rates for expansion capacity that becomes available on either an interruptible or firm basis.<sup>22</sup> Therefore, the State Commissions assert that even if a pipeline has negotiated rate agreements for all of the expansion capacity proposed in a certificate proceeding, the recourse rates nevertheless need to be properly designed and based on a reasonable estimate of the actual costs to construct and operate the expansion capacity.

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<sup>19</sup> *Portland Natural Gas Transmission System*, Opinion 524-A, 150 FERC ¶ 61,107, at P 195 (2015).

<sup>20</sup> *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 686 (2013); *Kern River Gas Transmission Co.*, Opinion No. 486-F, 142 FERC ¶ 61,132, at P 263 (2013).

<sup>21</sup> Transco cites the Commission's order that certificated its Rock Springs Lateral and additional mainline compression to provide service for another new electric generating plant. In that order, the Commission approved Transco's proposed incremental recourse rate for that expansion capacity, which was calculated using the pre-tax return of 15.34 percent from its settlement rates in Docket No. RP01-245. *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,205, at P 17 (2015).

<sup>22</sup> State Commissions' May 27, 2015 Answer at 2 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at P 4, order granting clarification, 74 FERC ¶ 61,194 (1996) (*Alternatives to Traditional Cost-of-Service Ratemaking*)).

23. The State Commissions are correct that “the predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate,”<sup>23</sup> and the Commission therefore requires that shippers have the option of choosing to pay a cost-based recourse rate for expansion capacity that becomes available. However, as the State Commissions acknowledge, the Commission’s consistent policy in section 7 certificate proceedings is to require that a pipeline’s cost-based recourse rates for incrementally-priced expansion capacity be designed using the rate of return from its most recent general rate case approved by the Commission under section 4 of the NGA in which a specified rate of return was used to calculate the rates.<sup>24</sup> Transco’s proposed incremental project recourse rate in this certificate proceeding is based on the specified pre-tax return of 15.34 percent underlying the design of its approved settlement rates in Docket No. RP01-245-000, *et al.*<sup>25</sup> Since Transco’s more recently approved general rate case

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<sup>23</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (citing *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076).

<sup>24</sup> *See, e.g., Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 33 (2011); *Florida Gas Transmission Co., LLC*, 132 FERC ¶ 61,040, at P 35 & n.12 (2010); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352, at 62,499 (2002); and *Mojave Pipeline Co.*, 69 FERC ¶ 61,244, at 61,925 (1994). *See also Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 132 (2006), *order on reh’g*, 118 FERC ¶ 61,007, at PP 120 & 122-23 (2007) (allowing, on rehearing, Dominion Cove Point LNG to recalculate incremental rates using the rates of return ultimately approved in its pending rate case, as opposed to its proposed rates of return). If a pipeline’s most recent general rate case involved a settlement that did not specify a rate of return or pre-tax return, the Commission’s policy requires that incremental rates in the pipeline’s certificate proceedings be calculated using the rate of return or pre-tax return from its most recent general rate case (or rate case settlement) in which a specified return component was used to calculate the approved rates. *See, e.g., Equitrans, L.P.*, 117 FERC ¶ 61,184, at P 38 (2006). This policy applies even if a pipeline calculated its proposed incremental rates for expansion capacity using a rate of return *lower* than the most recently approved specified rate of return. *Id.* (rejecting Equitrans’ proposed use of 14.25 percent ROE component for incremental rates for mainline extension and requiring recalculation using the specified pre-tax rate of return of 15 percent that was approved in its rate case).

<sup>25</sup> *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085.

settlements in Docket Nos. RP12-993-000, *et al.*<sup>26</sup> and RP06-569-004, *et al.*<sup>27</sup> were both “black box” settlements that did not specify the rate of return or most other cost of service components used to calculate the settlement rates, Transco calculated its proposed incremental rates in this certificate proceeding consistent with Commission policy by using the last Commission-approved specified pre-tax return of 15.34 percent from its prior rate proceeding in Docket No. RP01-245.

24. Further, in section 7 certificate proceedings the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under NGA sections 4 and 5.<sup>28</sup> The Commission develops the recourse rate for

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<sup>26</sup> *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029, at P 13 (2013) (certifying to the Commission an uncontested settlement in which, “[w]ith the exception of certain expressly designated items, the cost of service agreement was reached on a ‘black box’ basis”); *Transcontinental Gas Pipeline Co., LLC*, 145 FERC ¶ 61,205 (2013) (approving and accepting tariff records to implement rate case settlement).

<sup>27</sup> *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (approving and accepting tariff records to implement rate case settlement); *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,102, at P 53 (2014) (explaining that settlement reached in Docket No. RP06-569 was a “black box” settlement that did not specify most cost of service components including rate of return).

<sup>28</sup> *Atlantic Refining Co. v. Public Serv. Comm’n of New York*, 360 U.S. 378 (1959) (*CATCO*). In *CATCO*, the Court contrasted the Commission’s authority under sections 4 and 5 of the NGA to approve changes to existing rates using existing facilities and its authority under section 7 to approve initial rates for new services and services using new facilities. The court recognized “the inordinate delay” can be associated with a full-evidentiary rate proceeding and concluded that was the reason why, unlike sections 4 and 5, section 7 does not require the Commission to make a determination that an applicant’s proposed initial rates are or will be just and reasonable before the Commission certifies new facilities, expansion capacity, and/or services. *Id.* at 390. The Court stressed that in deciding under section 7(c) whether proposed new facilities or services are required by the public convenience and necessity, the Commission is required to “evaluate all factors bearing on the public interest,” and an applicant’s proposed initial rates are not “the only factor bearing on the public convenience and necessity.” *Id.* at 391. Thus, as explained by the Court, “[t]he Congress, in § 7(e), has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require when the Commission exercises authority under section 7,” *id.*, and the Commission therefore has the discretion in section 7 certificate proceedings to

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expansion capacity based on the pipeline's estimated cost of service. As discussed above, the State Commissions' protest included a DCF analysis for natural gas pipelines, which they contend reflects current market conditions and a median ROE of 10.95 percent. However, the Commission does not believe that conducting DCF analyses in individual certificate proceedings would be the most effective or efficient way for determining the appropriate ROEs for proposed pipeline expansions. While parties have the opportunity in section 4 rate proceedings to file and examine testimony with regard to the composition of the proxy group to use in the DCF analysis, the growth rates used in the analysis, and the pipeline's position within the zone of reasonableness with regard to risk, it would be difficult, if not impossible, to complete this type of analysis in section 7 certificate proceedings in a timely manner and attempting to do so would unnecessarily delay proposed projects with time sensitive in-service schedules. The Commission's current policy of calculating incremental rates for expansion capacity using the Commission-approved ROEs underlying pipelines' existing rates is an appropriate exercise of its discretion in section 7 certificate proceedings to approve initial rates that will "hold the line" until just and reasonable rates are adjudicated under section 4 or 5 of the NGA.

25. Here, Transco is required to file an NGA general section 4 rate case by August 31, 2018, pursuant to the comeback provision in Article 6 of the settlement in Docket No. RP12-993.<sup>29</sup> Parties in that future rate case will have an opportunity to review Transco's pre-tax return and other cost of service components. In addition, given the possibility that that rate case could result in another settlement for rates that are not based on a specified rate of return and, as discussed above, the Commission's policy in section 7 certificate proceedings is to require that a pipeline's initial rates for expansion capacity be designed using a Commission-approved, specified rate of return, the Commission would advise that parties in the rate case use that opportunity to address issues of concern relating to the rate of return that should be used in calculating initial rates in Transco's future certificate proceedings.<sup>30</sup>

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approve initial rates that will "hold the line" and "ensure that the consuming public may be protected" while awaiting adjudication of just and reasonable rates under the more time-consuming ratemaking sections of the NGA. *Id.* at 392.

<sup>29</sup> *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029.

<sup>30</sup> *See, e.g., Eastern Shore Natural Gas Co.*, 138 FERC ¶ 61,050 (2012) (approving settlement that established rates on "black box" basis but provided a specified pre-tax rate of return).

26. For the reasons discussed above, the Commission finds that it is appropriate to apply its general policy to calculate Transco's initial recourse rate in this proceeding and that parties raise in Transco's upcoming general rate case any issues and concerns they have regarding the rate of return or other cost of service components to be used in calculating Transco's recourse rates in subsequent certificate proceedings. Therefore, the Commission will deny the State Commissions' request for partial consolidation of Transco's certificate proceedings and full trial-type evidentiary hearing on the rate of return issue.<sup>31</sup>

## 2. Initial Rates

27. Transco proposes an initial incremental recourse reservation charge of \$0.44806 per Dth/day and a zero usage charge. Transco also proposes to assess its system interruptible, fuel, and lost and unaccounted for retention charges under its existing Rate Schedules FT and IT for the project. In support of the proposed initial rates, Transco submitted an incremental cost of service and rate design study showing the derivation of the project recourse rate for the mainline service based on a total first year cost of service of \$40,885,593 and billing determinants of 250,000 Dth/day.<sup>32</sup> The proposed cost of service is based on Transco's pre-tax rate of return of 15.34 percent, the most recently established pre-tax return,<sup>33</sup> and its system depreciation rates of 2.61 percent for onshore transmission facilities, including negative salvage, and 4.97 percent for solar turbines.<sup>34</sup>

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<sup>31</sup> The Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency. *Columbia Gulf Transmission Co.*, 139 FERC ¶ 61,236, at P 20 (2012); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008). A full trial-type evidentiary hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record. *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

<sup>32</sup> See Transco's Application at Exhibit P.

<sup>33</sup> *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085). Transco has used the specified pre-tax return and certain other cost factors underlying the Docket No. RP01-245 rates provided for in the settlement approved by the Commission in that rate proceeding because, as discussed above, the more recent Docket No. RP12-993 settlement agreement was a "black box" settlement, which does not specify a rate of return or most other cost of service components.

<sup>34</sup> *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205.

28. On April 30, 2015, the Commission issued a data request directing Transco to provide a breakdown of its Operation and Maintenance (O&M) expenses by FERC account number and labor and non-labor costs for the new compression, and measuring and regulating facilities. In response, Transco identified a total of \$592,085 in non-labor O&M costs in Account Nos. 853 and 864.<sup>35</sup> These non-labor costs are classified as variable costs, and section 284.7(e) of the Commission's regulations does not allow variable costs to be recovered through the reservation charge.<sup>36</sup>

29. As a part of the April 30, 2015 data request, Commission staff requested that Transco recalculate its incremental recourse rates to reflect the removal of variable costs. Transco's recalculation reduced the reservation charge from \$0.44806 to \$0.44157 per Dth/day and increased the proposed zero usage charge to \$0.00649 per Dth.<sup>37</sup> This recalculated incremental reservation charge of \$0.44157 per Dth/day is still higher than the currently applicable Rate Schedule FT reservation charge. Therefore, the Commission will require that the recalculated incremental base reservation charge of \$0.44157 per Dth/day be the initial recourse charge for firm service using the expansion capacity.<sup>38</sup>

30. Transco's estimated incremental usage charge of \$0.00649 per Dth attributable to the VSEP II expansion capacity is lower than the currently applicable Rate Schedule FT usage charge. Therefore, the Commission will require Transco to charge its currently applicable Rate Schedule FT usage charge for this project.

31. Transco proposes to charge its system interruptible transportation rates under existing Rate Schedule IT for interruptible service using the VSEP II expansion capacity.<sup>39</sup> The Commission will approve Transco's proposal as it is consistent with Commission policy requiring pipelines to charge their currently effective system interruptible rates for any interruptible service rendered using expansion capacity

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<sup>35</sup> Transco's May 11, 2015 Data Response, Response No. 1 and Schedule 1.

<sup>36</sup> 18 C.F.R. § 284.7(e) (2015).

<sup>37</sup> Transco's May 11, 2015 Data Response, Response No. 2 and Schedules 2 and 3.

<sup>38</sup> Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate. Certificate Policy Statement, 88 FERC at 61,745.

<sup>39</sup> Transco's May 11, 2015 Data Response, Response No 3.

integrated with existing capacity.<sup>40</sup> The Commission also is approving Transco's proposal to assess its generally applicable system fuel retention and electric power rates.<sup>41</sup>

32. Transco states its negotiated rate agreement with Virginia Power contains non-conforming provisions similar to those approved in connection with Transco's VSEP I in Docket No. CP13-30-000. Transco states that it will file the negotiated rate agreement prior to the commencement of service as required by Commission policy.<sup>42</sup>

**3. Preliminary Determination regarding Rolled-In Treatment for VSEP II Costs**

33. Transco requests that the Commission make a finding that it will be appropriate for Transco to charge a single incremental recourse rate for firm VSEP I and VSEP II services, based on the combined costs of service and billing determinants of both projects. In addition, Transco requests authorization to make a filing under section 4 of the NGA for the limited purpose of consolidating the rates for VSEP I and VSEP II services into a single incremental rate to be effective on the projected December 1, 2017, in-service date for the VSEP II capacity.<sup>43</sup> Transco emphasizes that VSEP II will expand capacity on Transco's mainline and South Virginia Lateral for service utilizing the same path as VSEP I services and further asserts that VSEP II will benefit significantly from the relatively inexpensive expansibility made possible by VSEP I.

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<sup>40</sup> See, e.g., *Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at P 62 (2015).

<sup>41</sup> Transco states that the project facilities are expected to result in an overall reduction in fuel use. Transco's Application at 9 and Exhibit Z-1.

<sup>42</sup> Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

<sup>43</sup> Transco cites *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161 (2012), *order on reh'g*, 142 FERC ¶ 61,025, at P 19 (2013) (*Tennessee*), where the Commission permitted Tennessee Gas Pipeline to make a section 4 filing for the limited purpose of consolidating the rates of its Northeast Upgrade Project and 300 Line Project into a single incremental rate.

34. The Commission will deny Transco's request. Notwithstanding that Transco is proposing here to roll the costs of this VSEP II expansion into the rates of another incrementally-priced project, VSEP I, rather than into its existing system rates, the standard for approval is the same. To receive a pre-determination in a certificate proceeding favoring rolled-in rate treatment in a future section 4 proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making such a determination, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).<sup>44</sup>

35. The Commission has determined Transco's projected revenue for the first year of project service to be \$39,693,750, compared to the projected cost of service for the first year of \$40,885,593. As a result, the projected cost of service would exceed projected revenues, suggesting that rolling the costs of VSEP II into a single incremental rate for all services using the combined VSEP I and VSEP II capacity would create the potential for the VSEP I shippers to subsidize services using the VSEP II expansion capacity.

36. Given that Transco's projected revenue for the first year of VSEP II service is less than the projected cost of service associated with VSEP II capacity and service, we find the record does not support a finding creating a presumption favoring any type of rolled-in rate treatment for VSEP II's fixed and non-fuel gas costs. Further, even if projected VSEP II costs were less than projected VSEP II revenue, the Commission does not generally permit a pipeline to file a limited section 4 proceeding to change the rates for some services but not others. While Transco is correct that the Commission made an exception in *Tennessee*,<sup>45</sup> the circumstances in that proceeding were materially different.

37. Tennessee sought approval to make a limited section 4 filing to propose a single incremental recourse rate for services using capacity created by the incrementally-priced project authorized in that proceeding and another incrementally-priced project authorized in a previous proceeding and already in service. While the Commission denied Tennessee's request in the certificate order, it granted Tennessee's request for rehearing on the issue, recognizing that at the time Tennessee was precluded by a prior rate settlement moratorium from initiating a general section 4 rate proceeding for another

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<sup>44</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

<sup>45</sup> *Tennessee*, 139 FERC ¶ 61,16, *order on reh'g*, 142 FERC ¶ 61,025.

thirteen months.<sup>46</sup> Here, while Transco's most recent rate settlement does not require it to initiate a new general rate case until August 31, 2018,<sup>47</sup> it has the option of making an earlier general section 4 rate case filing including a proposed single incremental recourse rate for service using the existing VSEP I expansion capacity or the VSEP II expansion capacity that it plans to place in service on December 1, 2017.<sup>48</sup>

38. In view of the above considerations, the Commission is denying Transco's requests for authorization to make a limited section 4 filing for purposes of rolling the costs of VSEP II into a single rate for VSEP I or VSEP II service and for a predetermination favoring such rolled-in rate treatment. However, this finding is without prejudice to Transco proposing to roll VSEP II's incremental fixed and non-fuel gas costs into its incremental VSEP I recourse rate in its next general section 4 rate case.

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<sup>46</sup> *Tennessee*, 142 FERC ¶ 61,025 at P 18.

<sup>47</sup> *Transcontinental Gas Pipeline Co., LLC*, 145 FERC ¶ 61,205 at P 8.

<sup>48</sup> The Commission also notes that Tennessee had agreed before proposing its earlier project to lower the negotiated rate being paid by that project's sole shipper once the second project's expansion capacity was in service in recognition that the first project likely would reduce the costs of the second project to create more expansion capacity for other shippers. *Tennessee*, 139 FERC ¶ 61,161 at P 24. While neither of Transco's expansion shippers subscribing its VSEP I capacity has objected to its request for a predetermination that would support rolling the VSEP II costs in with VSEP I costs, Transco does not assert that it had a similar agreement with the VSEP I shippers. Further, while Virginia Power will hold both VSEP I and VSEP II capacity, the other VSEP I shipper (Piedmont) has not subscribed any of the VSEP II capacity. As discussed above, since projected VSEP II costs will exceed VSEP II revenue during the first year of service, the result of Transco's roll-in proposal would be to increase the rate for VSEP I capacity. Finally, in granting Tennessee's request to make a limited section 4 filing to propose a single incremental rate for the capacity created by its two expansion projects, the Commission emphasized that "our ruling is procedural in nature and does not address the merits of Tennessee's specific proposal ... ." *Tennessee*, 142 FERC ¶ 61,025 at P 19. In this proceeding, Transco asks not only for approval to make a limited section 4 filing to propose a single incremental rate for VSEP capacity, but also requests a finding creating a presumption that would shift the evidential burden of proof to any party opposing such rate treatment.

#### 4. Reporting Incremental Costs

39. Section 154.309 of the Commission's regulations<sup>49</sup> includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers. Therefore, Transco must keep separate books and accounting of costs and revenues attributable to VSEP II capacity and incremental services using that capacity as required by section 154.309. The books should be maintained with applicable cross-references. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.<sup>50</sup>

#### C. Environmental Analysis

40. On May 6, 2015, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the proposed Virginia Southside Expansion Project II and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

41. We received comments in response to the NOI from the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, the Virginia Department of Transportation, the Virginia Department of Historic Resources, the Prince William County Service Authority, and two individuals. The scoping comments concerned potential impacts on state-managed natural heritage resources, including state-listed Manassas stonefly habitat and a freshwater mussel concentration area, waterbodies, wildlife, public safety, and historic properties.

42. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an EA for Transco'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, cumulative impacts, and alternatives. The EA was placed into the public record on May 13, 2016. All substantive environmental comments received in response to the NOI were addressed in the EA, as were comments by Sierra Club that Transco's

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<sup>49</sup> 18 C.F.R. § 154.309 (2015).

<sup>50</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

proposed VSEP II, its previously authorized VSEP I, and its proposed Atlantic Sunrise Project should be considered as connected, cumulative, and/or similar projects in the same environmental document, and that the environmental analysis also should include indirect and cumulative impacts of the Greenville power plant to be served using the VSEP II expansion capacity.<sup>51</sup> No further environmental comments were filed.

43. The EA included a recommendation that prior to construction, Transco should file the results of an air quality screening (AERSCREEN), or refined modeling analysis (AERMOD or U.S. Environmental Protection Agency-approved alternative) for all of the emission generating equipment (including existing equipment) at Compressor Station 166. We note that Transco filed the required modeling on June 14, 2016, showing that the modeled existing emissions, plus the modeled incremental increase in emissions of criteria pollutants from the modifications, result in local concentrations below the national ambient air quality standards. Therefore, we will not include the EA's environmental recommendation regarding air modeling as a condition in this Order.

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

45. 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

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<sup>51</sup> The environmental analysis for Transco's VSEP II considered VSEP I and the Atlantic Sunrise Project and concluded that each of the three projects is functionally independent and that the projects therefore did not need to be addressed in a single NEPA document. EA, Section A.3, at 3-4. However, the cumulative impacts analysis included VSEP I and the Atlantic Sunrise Project and 14 other past, current, and planned jurisdictional and non-jurisdictional projects in the region, including the Greenville Power Station. EA, Section B.9, at 62 *et seq.*, and Appendix E. The EA concluded that with the customary and recommended additional mitigation measures, VSEP II's impacts would be temporary and relatively minor and have a small and insignificant cumulative effect when added to the mostly temporary and minor impacts from the other projects. EA, Section B.9, at 78.

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>52</sup>

46. 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,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco authorizing it to construct and operate the Virginia Southside Expansion Project II, as described in the application and conditioned herein.

(B) The certificate issued in ordering paragraph (A) is conditioned on Transco's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in Appendix B of this order; and
- (4) executing, prior to the commencement of construction, firm contracts for volumes and service terms equivalent to those in its precedent agreements.

(C) Transco's initial incremental reservation charge under Rate Schedule FT as recalculated for the project to reflect the removal of variable costs is approved, as discussed above.

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

(D) Transco is required to charge its generally applicable Rate Schedule FT Zone 5-6 usage charge as part of its initial recourse rate.

(E) Transco's request to charge its generally applicable Zone 5-6 interruptible rates and fuel is approved.

(F) Transco's request for a pre-determination to roll-in its project costs with its Virginia Southside Expansion Project I is denied.

(G) Transco shall file actual tariff records with the recalculated base reservation charge no earlier than 60 days and no later than 30 days, prior to the date the project facilities go into service.

(H) As described in this order, not less than 30 days and not more than 60 days prior to the commencement of service using the authorized expansion capacity, Transco must file an executed copy of any non-conforming service agreement associated with the project as part of its tariff, disclosing and reflecting all non-conforming language, and a tariff record identifying each such agreement as a non-conforming agreement consistent with section 154.112 of the Commission's regulations.

(I) As described in the body of this order, Transco must file any negotiated rate agreement or tariff record setting forth the essential terms of the agreement associated with the project at least 30 days, but not more than 60 days before the proposed effective date of such rates.

(J) Transco shall keep separate books and accounting of costs attributable to the incremental services using the expansion capacity created by the project, as discussed herein.

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

(L) The requests for partial consolidation and a full, trial-type evidentiary hearing are denied.

(M) The untimely motion to intervene filed jointly by Sierra Club and Appalachian Mountain Advocates is granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A****Virginia Southside Expansion Project II  
Docket No. CP15-118-000****Timely, Unopposed Interventions**

Alabama Gas Corporation  
Atmos Energy Marketing, LLC  
Columbia Gas of Virginia, Inc.  
ConocoPhillips Company  
Consolidated Edison Company of New York, Inc., and Philadelphia Gas Works  
Duke Energy Carolinas, LLC; Duke Energy Progress, Inc.; and Duke Energy Florida, Inc. (jointly)  
Exelon Corporation  
Municipal Gas Authority of Georgia,<sup>53</sup> and Transco Municipal Group<sup>54</sup> (jointly)  
New Jersey Natural Gas Company  
National Grid Gas Delivery Companies  
New York State Public Service Commission  
NJR Energy Services Company  
North Carolina Utilities Commission  
Piedmont Natural Gas Company, Inc.  
PSEG Energy Resources & Trade, LLC

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<sup>53</sup> Municipal Gas Authority of Georgia includes the following municipalities served by Transco: the Georgia municipalities of Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, Winder, and Tri-County Natural Gas Company (consisting of Crawfordville, Greensboro, and Union Point); the East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama.

<sup>54</sup> The Transco Municipal Group includes: the cities of Alexander City and Sylacauga, Alabama; the Commissions of Public Works of Greenwood, Greer, and Laurens, South Carolina; the cities of Fountain Inn and Union, South Carolina; the Patriots Energy Group (consisting of the Natural Gas Authorities of Chester, Lancaster, and York Counties, South Carolina); and the cities of Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson, North Carolina.

Public Service Company of North Carolina, and South Carolina Electric & Gas Company  
(jointly)  
UGI Distribution Companies<sup>55</sup>  
Virginia Power Services Energy Corporation, Inc.  
Washington Gas Light Company

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<sup>55</sup> UGI Distribution Companies include: UGI Utilities, Inc. and UGI Penn Natural Gas, Inc.

## Appendix B

### **Virginia Southside Expansion Project II Docket No. CP15-118-000**

#### **Environmental Conditions**

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

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

involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Transco 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 the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;

- c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions. Transco will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and

- (4) the start and completion of restoration.
7. Transco shall employ at least two EIs for the project facilities in Virginia, and one EI for the facility modifications in North Carolina and South Carolina. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. for the Greensville Lateral, a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the conditions in the Order Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Transco shall file a noise survey for Compressor Stations 166 and 185 **no later than 60 days** after placing the stations into service. If a full power load condition noise survey is not possible, Transco shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds predicted values at any nearby noise sensitive area, Transco should:

- a. file a report with the Secretary, for review and written approval by the Director of the OEP, on what changes are needed;
- b. install additional noise controls to meet that level within 1 year of the in-service date; and
- c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of the OEP **no later than 60 days** after it installs the additional noise controls.