

156 FERC ¶ 61,092  
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. CP15-117-000

ORDER ISSUING CERTIFICATE

(Issued August 3, 2016)

1. On March 19, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing it to construct, lease, and operate pipeline, compression, metering, and appurtenant facilities in Virginia, North Carolina, and Georgia (Dalton Expansion Project). As discussed below, the Commission will grant the requested authorizations, subject to conditions.

**I. Background and Proposal**

**A. Construction of Facilities**

2. Transco is a natural gas company, as defined by section 2(6) of the NGA,<sup>2</sup> which transports natural gas in interstate commerce. Transco's natural gas transmission system extends through Texas, Louisiana, the offshore Gulf of Mexico area, Mississippi, Alabama, 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> *Id.* § 717a(6).

3. Transco proposes to construct and operate approximately 114.99 miles of 30-, 24-, 20-, and 16-inch diameter pipeline (Dalton Lateral), three meter stations, and one compressor station (Compressor Station 116) in Georgia, as well as valves, yard piping, and other appurtenant facilities in Virginia and North Carolina. Specifically, Transco proposes to construct and operate:

- Dalton Lateral Segment 1 – Approximately 7.6 miles of 30-inch-diameter pipeline in Coweta and Carroll Counties, Georgia, from the discharge of the existing Compressor Station 115 to the proposed Compressor Station 116;
- Dalton Lateral Segment 2 – Approximately 51.3 miles of 24-inch-diameter pipeline in Carroll, Douglas, Paulding, and Bartow Counties, Georgia, from the discharge of proposed Compressor Station 116 to the proposed Beasley Road Meter Station;
- Dalton Lateral Segment 3 – Approximately 53.8 miles of 20-inch-diameter pipeline in Bartow, Gordon, Murray, and Whitfield Counties, Georgia, from the proposed Beasley Road Meter Station to the proposed Looper Bridge Road Meter Station;
- AGL Spur Lateral – Approximately 2.0 miles of 16-inch-diameter pipeline in Murray County, Georgia, from milepost (MP) 105.2 of the Dalton Lateral to the proposed Murray Meter Station;
- Beasley Road Meter Station (formally known as the AGL-Bartow Meter Station) – a new 190,000 dekatherms (Dth) per day meter station in Bartow County, Georgia;
- Looper Bridge Road Meter Station (formally known as the Oglethorpe-Smith Meter Station) – a new 208,000 Dth per day meter station in Murray County, Georgia;
- Murray Meter Station (formally known as the AGL-Murray Meter Station) – a new 50,000 Dth per day meter station in Murray County, Georgia;
- Compressor Station 116 – a new 21,830 horsepower compressor station in Carroll County, Georgia, with two Solar Taurus 70 gas turbine driven compressor units near MP 7.6 on the Dalton Lateral;
- Valves and yard piping for south flow compression at Compressor Stations 165 in Pittsylvania County, Virginia, and 180 in Prince William County, Virginia;
- Odor masking/deodorization of valves at valve sites between Compressor Stations 160 in Rockingham County, North Carolina, and 165 in Pittsylvania County, Virginia;

- Odor detection and supplemental odorization at 20 delivery meters on the South Virginia Lateral and between Compressor Stations 160 and 165 in Rockingham, Northampton and Hertford Counties, North Carolina, and Pittsylvania, Brunswick, Mecklenburg, Halifax, and Greenville Counties, Virginia;
- Valve site masking/deodorization at Compressor Station 167 in Mecklenburg County, Virginia; and
- Related appurtenant underground and aboveground facilities.

4. Transco states that the proposed project will enable it to provide 448,000 Dth per day of incremental firm transportation service from a receipt point in Zone 6 on its mainline in Mercer County, New Jersey, for delivery to an interconnection with Gulf South Pipeline Company, LP in Pike County, Mississippi, and to interconnections in northwest Georgia through the proposed Dalton Lateral.

5. Transco held an open season from May 30 through June 28, 2012. As a result of the open season, Transco executed binding precedent agreements with Atlanta Gas Light Company (Atlanta Gas Light or AGL) and Oglethorpe Power Corporation (Oglethorpe) for 240,000 and 208,000 Dth per day of firm transportation service, respectively, for 25 years. This represents all of the capacity associated with the proposed Dalton Expansion Project.

6. The project's estimated cost is approximately \$471.9 million. Transco states that it will undertake permanent financing at a later date as part of its overall, long-term financing program. Transco has proposed an incremental recourse reservation rate for firm transportation service on the project facilities, as described in more detail below. Atlanta Gas Light and Oglethorpe have agreed to pay a negotiated rate. Transco will provide service under the terms and conditions of its existing Rate Schedule FT.

## **B. Lease of Facilities**

7. Transco and Dogwood Enterprise Holdings, Inc. (Dogwood) will jointly own the Dalton Lateral, as tenants in common, with each holding a 50 percent undivided ownership interest.<sup>3</sup> Dogwood will hold its 50 percent ownership interest as a "passive owner" of the lateral. On the in-service date of the Dalton Lateral, Dogwood will lease its ownership interest in the lateral, including its share of the capacity rights, to Transco, which will have full possessory, operational, and capacity rights.

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<sup>3</sup> Dogwood is an affiliate of AGL Resources, the parent company of Atlanta Gas Light.

8. The lease agreement provides that Dogwood and Transco will jointly fund the cost to construct the Dalton Lateral facilities in proportion to their respective ownership interests. Transco is the sole applicant for the NGA section 7(c) certificate to construct and operate the Dalton Lateral, as Dogwood is not currently an NGA jurisdictional entity and does not intend to become one as part of the Dalton Lateral ownership structure.

## **II. Notice, Interventions, and Procedural Issues**

9. Notice of Transco's application was published in the *Federal Register* on April 10, 2015 (80 Fed. Reg. 19,312). The parties listed in Appendix A filed timely, unopposed motions to intervene.<sup>4</sup>

10. The parties listed in Appendix B filed late motions to intervene. We will grant the late-filed motions to intervene, since to do so at this stage of the proceeding will not delay, disrupt, or unfairly prejudice the proceeding or other parties.<sup>5</sup>

11. The North Carolina Utilities Commission and the New York State Public Service Commission (State Commissions) filed a joint protest to Transco's application. Transco filed an answer to the State Commissions' protest and 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, the Commission finds good cause to waive its rules and accept the answers because they provide information that has assisted in our decision making process.<sup>6</sup>

12. The Bartow County School System and Bartow County Board of Education (Bartow), the 1460 Partnership, LLLP (1460 Partnership), and the State Commissions request an evidentiary hearing. Specifically, Bartow seeks a hearing on issues regarding the route of the Dalton Lateral, claiming that the pipeline is proposed to be located at an unsafe distance from two elementary schools and that the pipeline's proposed location will interfere with its ability to expand the schools on land that it specifically acquired for that purpose. The 1460 Partnership seeks a hearing on the route of the lateral across the

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<sup>4</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2015).

<sup>5</sup> *See* 18 C.F.R. § 385.214(c)(2) (2015).

<sup>6</sup> *Id.* § 385.213(a)(2).

Pole Cat Creek Farms, over which it has a fee simple property interest.<sup>7</sup> The State Commissions seek a hearing on (1) Transco's use of a 15.34 percent pre-tax rate of return in developing its proposed recourse rates and (2) whether the project is being subsidized by prior expansions that created southbound capacity on Transco's mainline. The State Commissions also request that we partially consolidate this proceeding with Transco's proposals to construct and operate the Virginia Southside Expansion Project II<sup>8</sup> and the Atlantic Sunrise Project<sup>9</sup> in order to address issues about Transco's pre-tax rate of return.

13. Although our regulations provide for a hearing, neither section 7 of the NGA nor our regulations require that such hearing be a trial-type evidentiary hearing.<sup>10</sup> When, as is usually the case, the written record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a paper hearing.<sup>11</sup> That is the case here. We have reviewed the requests for an evidentiary hearing by Bartow, the 1460 Partnership, and the State Commissions and conclude that all issues of material fact relating to Transco's proposal are capable of being resolved on the basis of the written record. Accordingly, we will deny the requests for a formal hearing. As to the State Commissions' request for partial consolidation, 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

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<sup>7</sup> The Pole Cat Creek Farms is an undeveloped tract of land, consisting of 360 acres of forest wetland, freshwater lake, and field meadow. The 1460 Partnership states that the tract is home to more than 50 types of plants and 150 types of animals.

<sup>8</sup> In the Virginia Southside Expansion Project II, Transco was authorized to construct and operate approximately 4.33 miles of pipeline and compression facilities. *See Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,022 (2016).

<sup>9</sup> In the Atlantic Sunrise Project, Docket No. CP15-138-000, Transco proposes to construct and operate approximately 57.3 miles of 30-inch-diameter pipeline and 125.2 miles of 42-inch-diameter pipeline in Pennsylvania.

<sup>10</sup> *See Minisink Residents for Environmental Preservation and Safety v. FERC*, 762 F.3d 97, 114 (D.C. Cir. 2014) ("FERC's choice whether to hold an evidentiary hearing is generally discretionary.").

<sup>11</sup> *See NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,192 (1998), *reh'g denied*, 90 FERC ¶ 61,142 (2000); *Pine Needle LNG Co., LLC*, 77 FERC ¶ 61,229, at 61,916 (1996). Moreover, courts have recognized that even where there are disputed issues the Commission need not conduct an evidentiary hearing if the disputed issues "may be adequately resolved on the written record." *Minisink Residents*, 762 F.3d at 114 (quoting *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994)).

consolidation will ultimately result in greater administrative efficiency.<sup>12</sup> Since there is no need for an evidentiary hearing in this proceeding, we will deny the State Commissions' request for partial consolidation.

14. The Natural Gas Supply Association, Atlanta Gas Light, and Oglethorpe filed comments supporting the project. Numerous other parties filed comments regarding the routing of the Dalton Lateral, safety, sufficiency of information, and potential aesthetic, economic, and environmental impacts of the proposal. The concerns raised in the State Commissions' protest and in the comments by the other parties are addressed below or in the Environmental Assessment (EA).

### **III. Discussion**

15. Since Transco proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>13</sup>

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

16. The Certificate Policy Statement provides guidance for evaluating proposals for new construction.<sup>14</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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

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<sup>12</sup> See *Columbia Gulf Transmission Co.*, 139 FERC ¶ 61,236, at P 20 (2012); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); see also *Mobil Oil Explor. & Prod. Serv. v. United Distrib. Cos.*, 498 U.S. 211, 230-31 (1991) (agencies "enjoy[] broad discretion" in determining how best to order its proceedings).

<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).

avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

18. As discussed above, the threshold requirement for a new project is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes an incremental recourse rate for the project – as Transco does here – the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>15</sup> Because Transco proposes to charge an incremental rate for the services proposed in this proceeding that, as discussed below, exceeds the existing applicable system rate, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

19. The State Commissions assert that Transco has not addressed the possibility that the proposed project will be subsidized by shippers on Transco's recently-approved Leidy Southeast Project in Pennsylvania, which has a higher recourse rate than the incremental recourse rate proposed for this project. The bulk of the Leidy Southeast facilities are upstream of the proposed Dalton facilities and transport gas from receipt points on Transco's Leidy Line to Transco's mainline. We find that the Leidy Southeast facilities are not integral to the provision of the proposed Dalton Expansion Project services. The two projects' transportation paths and facilities are too dissimilar for subsidization to be a concern. Thus we find that existing Leidy Southeast Project shippers will not subsidize the Dalton Expansion Project shippers.

20. Transco has designed the Dalton Expansion Project to ensure that there will not be any adverse impacts on its existing shippers. With respect to other pipeline's customers,

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<sup>15</sup> See, e.g., *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106 (2016).

there will be no adverse impact on other pipelines in the region or their captive customers because the Project is not intended to replace service on other pipelines. Also, no pipeline company or their captive customers have protested Transco's application.

21. Regarding effects on landowners and communities, the proposed Dalton Expansion Project will disturb approximately 1,764 acres of land during construction and about 746.3 acres during operation. To minimize impacts on landowners, Transco will collocate approximately 49 percent of the proposed pipeline facilities with existing rights-of-way and on previously disturbed property. The modifications to existing compressor stations will take place within the fence lines of those existing facilities. Accordingly, we find that Transco has designed the project to minimize adverse impacts on landowners and surrounding communities.

22. Transco has entered into binding precedent agreements for 25 years with Atlanta Gas Light and Oglethorpe, which fully subscribe the project. Based on the benefits the project will provide<sup>16</sup> and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Transco's proposal, subject to the conditions discussed below.

## **B. Rates**

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

23. 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 Dalton Expansion Project proposal in this proceeding, as well as in its recently approved Virginia Southside Expansion II Project in Docket No. CP15-118-000, and its proposed Atlantic Sunrise Project in Docket No. CP15-138-000. The State Commissions acknowledge that 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 that rate case was fifteen years ago. They argue the incremental recourse rates approved in the current proceedings should take into account the significant changes

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<sup>16</sup> The shippers state that Commission approval of Transco's application will provide more diversified natural gas supply options (Oglethorpe intervention at 2 and comments in support of the EA at 2) and enable Atlanta Gas Light to meet growing customer demands in Georgia (Atlanta Gas Light intervention at 2 and June 10, 2016 support letter at 2).

in financial markets since then.<sup>17</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>18</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>19</sup> They request partial consolidation of these proceedings to consider the appropriate pre-tax return in a full evidentiary hearing.

24. As the State Commissions argued in the recent proceeding regarding Transco's Virginia Southside Expansion II Project,<sup>20</sup> 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 of the range of reasonable returns for which the median ROE was 10.28 percent.<sup>21</sup> The State Commissions also point to the Commission's 2013 orders that limited the ROEs for

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<sup>17</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>18</sup> State Commissions' April 22, 2015 Protest in Docket No. CP15-117-000, *et al.*

<sup>19</sup> Preliminary Pipeline DCF Analysis Exhibit to State Commissions' Protest.

<sup>20</sup> *Transcontinental Gas Pipeline Co., LLC*, 156 FERC ¶ 61,022, at PP 23-26 (2016).

<sup>21</sup> *Portland Natural Gas Transmission System*, Opinion No. 524-A, 150 FERC ¶ 61,107, at P 195 (2015).

El Paso Natural Gas Company, L.L.C. and Kern River Gas Transmission Company to 10.5 percent and 11.55 percent, respectively.<sup>22</sup>

25. Transco's answer emphasizes that this proceeding and the proceedings on its proposed Virginia Southside Expansion II 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>23</sup> In the State Commissions' answer to Transco's answer, they contend that when the Commission grants a pipeline 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>24</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.

26. 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>25</sup> and the

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<sup>22</sup> *El Paso Natural Gas Co., L.L.C.*, 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>23</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>24</sup> State Commissions' May 27, 2015 Answer at 2 (citing *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076).

<sup>25</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001) (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076).

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>26</sup> Transco's proposed incremental recourse rate for the Dalton Expansion Project 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>27</sup> Since Transco's most recently approved general section 4 rate case settlements in Docket Nos. RP12-993-000, *et al.*<sup>28</sup> and RP06-569-004, *et al.*<sup>29</sup>

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<sup>26</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 & 122-123 (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 section 4 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 section 4 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>27</sup> *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085.

<sup>28</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>29</sup> *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (approving and accepting tariff records to implement rate case settlement); *Transcontinental Gas*

(continued...)

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.

27. 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>30</sup> The Commission develops the recourse rate for 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 analysis in individual certificate proceedings would be the most effective or efficient way for

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*Pipe Line Co., LLC*, 147 FERC ¶ 61,102, at P 53 (2014) (explaining that the settlement reached in Docket No. RP06-569 was a “black box” settlement that did not specify a rate of return).

<sup>30</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” that 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 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.

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.

28. 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>31</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>32</sup>

29. For the reasons discussed above, and consistent with the rate of return accepted for the Virginia Southside Expansion II Project,<sup>33</sup> the Commission finds that it is appropriate to apply its general policy and accepts Transco's use of a pre-tax return of 15.34 percent to calculate Transco's initial recourse rate in this proceeding. Parties should 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.

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<sup>31</sup> *Transcontinental Gas Pipe Line Co., LLC*, 144 FERC ¶ 63,029.

<sup>32</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).

<sup>33</sup> *Transcontinental Gas Pipeline Co.*, 156 FERC ¶ 61,022 at P 26.

## 2. Initial Rates

30. Transco proposes an initial incremental recourse reservation charge of \$0.50580 per Dth/day under its existing Rate Schedule FT for service on 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 recourse rate under the project based on a total first year cost of service of \$82,708,551 and billing determinants of 448,000 Dth/day.<sup>34</sup> The proposed cost of service is based on a pre-tax rate of return of 15.34 percent, and Transco's system depreciation rates of 2.61 percent for onshore transmission facilities, including negative salvage, and 4.97 percent for solar turbines.<sup>35</sup> The proposed cost of service also includes the lease payments to Dogwood at an annualized amount equal to approximately \$25,691,000.

31. On October 29, 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 project. In response, Transco identified a total of \$357,883 in non-labor O&M costs in Account Nos. 853 and 864.<sup>36</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>37</sup> Therefore, Transco must recalculate its incremental recourse reservation rate to reflect the removal of variable costs.

32. Transco's proposed incremental reservation charge of \$0.50590 per Dth/day is higher than the currently applicable Rate Schedule FT Zone 6-4 reservation charge of \$0.41704 per Dth/day. We do not expect that recalculation of the proposed rate to remove the variable costs identified above will result in an incremental rate that is lower than the existing system rate. Accordingly, because an appropriately calculated incremental reservation charge will be higher than the currently applicable Rate Schedule FT reservation charge, the Commission will require use of the recalculated incremental

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<sup>34</sup> See Transco's Application at Exhibit P.

<sup>35</sup> See *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205, which established the current system depreciation rate and the current negative salvage rate.

<sup>36</sup> Transco's November 2, 2015 Data Response, Response No. 1 and Schedule 1.

<sup>37</sup> 18 C.F.R. § 284.7(e) (2015).

reservation charge as the initial recourse reservation charge for firm service using the expansion capacity.<sup>38</sup>

33. Transco did not propose an incremental usage charge since its initial filing included no variable costs. An incremental usage charge calculated to recover the \$357,883 in variable costs would be lower than the currently applicable Rate Schedule FT Zone 6-4 usage charge of \$0.02375 per Dth. Therefore, the Commission will require Transco to charge its currently applicable Rate Schedule FT usage charge for the project.

34. Transco's application does not address recourse rates for interruptible service using the expansion capacity. Consistent with Commission policy, the Commission will require Transco to charge its currently effective system interruptible rates for interruptible service using the expansion capacity.<sup>39</sup>

35. Transco states that Atlanta Gas Light Company and Oglethorpe have elected to enter into negotiated rate agreements for their capacity. Transco states that it will file the negotiated rate agreements prior to the commencement of service as required by Commission policy.<sup>40</sup>

### **3. Fuel Retention and Electric Power Rates**

36. Transco proposes to charge its generally applicable system fuel retention and electric power rates for service on the project. Transco states that the project facilities will reduce overall system fuel use (gas fuel consumption plus the gas equivalent of electric power consumption) to the benefit of non-project shippers.<sup>41</sup> Transco's fuel study shows that the project impact of fuel consumption will result in a 30.53 percent

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

<sup>40</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>41</sup> See Transco's Application at 11, Exhibit Z-1.

reduction in system fuel use attributable to existing shippers.<sup>42</sup> In view of this, we will approve Transco's proposal to charge its generally applicable system gas fuel and electric power rates for service using the expansion capacity.

#### **4. Inexpensive Expansibility**

37. The State Commissions assert that Transco's application appears to be deficient because it fails to address the issue of inexpensive expansibility (i.e., whether it was possible to construct the Dalton Expansion Project at a lower cost because of the previous construction of the Leidy Southeast Project). The State Commissions claim that the Dalton Expansion Project allows shippers to transport gas on Transco's mainline from New Jersey to Mississippi, but not pay for any major facilities north of Georgia, which they contend raises the question of whether this project will be subsidized by shippers on prior expansions that created southbound capacity on Transco's mainline. The State Commissions note that the proposed \$0.50580 recourse rate for the Dalton Expansion Project is significantly lower than the estimated recourse rate of \$0.67393 for Leidy Southeast Project, which will enable shippers to transport gas from receipt points on Transco's Leidy Line in Pennsylvania to various delivery points along Transco's mainline as far south as Transco's existing Station 85 Zone 4 and 4A pooling points in Choctaw County, Alabama. Thus, the State Commissions argue the new Dalton Expansion Project will allow shippers to transport gas further south on Transco's mainline at a lower recourse rate than the Leidy Southeast Project shippers.

38. Transco states that the inexpensive expansibility doctrine has no application to the Dalton and Leidy Southeast Projects. Transco states that the Leidy Southeast Project involves construction of extensive looping and compression on Transco's Leidy Line. In contrast, the Dalton Expansion Project principally involves the construction of a new, 111-mile lateral off the Transco mainline in Georgia. Transco states that the bulk of the Leidy Southeast Project costs are for facilities upstream of the point where the Dalton capacity commences, and include pipeline looping and compressor station horsepower additions on the Leidy Line necessary to transport gas from the Leidy Southeast receipt points on the Leidy Line to the point of interconnection between the Leidy Line and Transco's mainline. Thus, Transco asserts that the Leidy Southeast Project facilities do not beneficially affect the facility costs underlying the Dalton Expansion Project. Transco concludes that the primary firm capacity paths

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<sup>42</sup> Transco's study was based on ten representative days between November 1, 2013 and October 31, 2014. Transco states that the system was modeled with and without the incremental project facilities and transportation volumes. *See* Transco's Application at Exhibit Z-1.

and facilities under the two projects are too dissimilar to consider a roll-in of the costs of the projects.

39. The Commission disagrees with the State Commissions that the Dalton Expansion Project is a result of inexpensive expansibility made possible by the Leidy Southeast Project. As Transco correctly stated, the bulk of the Leidy Southeast Project are facilities upstream of the point where the Dalton capacity commences and were constructed to enable delivery of gas from Transco's Leidy Line to Transco's mainline. Conversely, the Dalton Expansion Project transports gas from Transco's Station 210 Zone 6 Pooling Point in Mercer County, New Jersey, and transportation of the volumes entering this pool are not dependent on the Leidy Southeast Project being constructed. Due to the nature of pipeline construction, service on almost all incremental expansions use some part of the existing pipeline system to provide service, since expansion volumes can often be delivered by constructing discrete facilities in key areas to alleviate bottlenecks or increasing throughput by adding looping or compression. Thus, as we have here, the Commission addresses concerns about potential subsidization by comparing the rate calculated to recover the costs associated with the proposed expansion capacity to the applicable existing system rate for the project service and requiring pipelines to use the higher of the two as the recourse rate for project service. Given the lack of interdependence between the Dalton Expansion Project and the Leidy Southeast Project, there is no basis for basing our subsidization determination on a comparison, instead, of the rates of the two expansion projects, as suggested by the State Commissions.

##### **5. Reporting Incremental Costs**

40. Section 154.309 of the Commission's regulations<sup>43</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 Dalton Lateral 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>44</sup>

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<sup>43</sup> 18 C.F.R. § 154.309 (2015).

<sup>44</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

## 6. Lease Agreement

41. The Dalton Lateral will be jointly owned and jointly funded by Transco and Dogwood, with each party holding a 50 percent undivided joint ownership interest. Dogwood will hold its 50 percent ownership interest as a “passive owner” of the Lateral. On the in-service date of the project, Dogwood will lease its 50 percent ownership interest to Transco for a primary term of 25 years. Transco asserts that during the lease term it will have full possessory and operational rights to the lateral and will have 100 percent of the capacity rights on the lateral.

42. The Construction and Ownership Agreement provides that Dogwood and Transco will jointly fund the cost to construct the Dalton Lateral facilities in proportion to their respective ownership interests. Because Dogwood will be a passive owner, Transco asserts that the Commission should find that Dogwood does not require a certificate in connection with the project. Accordingly, Transco requests that the certificate authority requested herein be granted solely to Transco and pertain to 100 percent of the Dalton Lateral facilities.

43. Transco asserts that it will utilize the capacity rights under the lease, in conjunction with the capacity to be created by the other project facilities, to provide transportation services under its Tariff. Transco further asserts that during the proposed lease, all operating and maintenance expenses will be Transco’s responsibility. Transco states that the Lease Agreement includes a mechanism for Transco and Dogwood to share maintenance capital expenditures incurred by Transco to repair or replace the Dalton Lateral facilities.

44. The Lease Agreement provides for a primary term of 25 years and may be extended, at Transco’s option, for two successive five-year terms. Subject to Transco’s right to extend the term of the Lease Agreement, the Lease Agreement will continue in effect for successive one-year extensions until prior written notice to terminate is provided by Transco to Dogwood. Transco asserts that at the termination of the Lease Agreement, possessory and operational rights to the leased facilities will revert to Dogwood, subject to the receipt of the necessary authorizations from the Commission.

45. The Lease Agreement provides that Transco will pay to Dogwood a fixed monthly payment of \$2,140,916.70 for the 25-year primary term. The monthly lease charge during each term extension will be determined in accordance with a formula detailed in Exhibit A of the Lease Agreement, reflecting an adjusted annual cost of service for the Dalton Lateral and a monthly unsubscribed capacity sharing factor, if any. In addition, Transco will pay Dogwood a maintenance capital surcharge in the form of a monthly cost of service payment based on the amount of maintenance capital expenditures, if any, reimbursed by Dogwood to Transco. Transco asserts that its annual lease payments to Dogwood under the Lease Agreement are less than the equivalent cost of service that would apply if Transco directly owned 100 percent of the Dalton Lateral facilities (i.e., if

Transco constructed Dogwood's 50 percent ownership share of the Dalton Lateral instead of leasing Dogwood's 50 percent ownership share).

46. Consistent with Commission regulations, Transco proposes to record the lease as a capital lease in Account 101.1, Property under Capital Leases, and the related obligation in Account 243, Obligations under Capital Leases – Current, and Account 227, Obligations under Capital Leases – Noncurrent. Transco contends that the lease qualifies as a capital lease because the present value at the beginning of the lease term of the minimum lease payments exceeds 90 percent of the fair value of the leased property to the lessor at the inception of the lease. Transco states that the costs and revenues associated with the project's leased facilities will be accounted for separately and segregated from its other system costs.

47. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.<sup>45</sup> To enter into a lease agreement, the lessee generally is required to be a natural gas company under the NGA and requires section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.<sup>46</sup>

48. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect

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<sup>45</sup> *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

<sup>46</sup> *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

existing customers.<sup>47</sup> We find that the proposed lease agreement between Transco and Dogwood satisfies these requirements.<sup>48</sup>

49. The Commission has found that capacity leases in general have several potential benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.<sup>49</sup> In addition, leases can result in administrative efficiencies for shippers.<sup>50</sup>

50. The annual amount Transco would pay Dogwood under the lease is less than what it would cost if Transco constructed and owned the facilities being leased from Dogwood; thus, shippers will benefit from the lease arrangement. During the 25 year primary term of the Lease Agreement, Transco will pay Dogwood a fixed lease payment of \$2,140,916.70 per month for Dogwood's ownership interest in the Dalton Lateral. The annualized amount of such lease charge is \$25,691,000,<sup>51</sup> which is then compared to the estimated annual cost of service of \$46,445,747, assuming Transco constructed and owned Dogwood's share of the Dalton Lateral.<sup>52</sup> Since the annual amount to be paid

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<sup>47</sup> *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order on reh'g*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155 (2011); *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 30 (2008); *Gulf South Pipeline Co., L.P.*, 119 FERC ¶ 61,281, at P 37 (2007).

<sup>48</sup> The second criterion, that "the lease payments [be] less than, or equal to, the lessor's firm transportation rates for comparable service of the terms of the lease on a net present value basis," is not applicable to the circumstances here, as Dogwood does not provide transportation services and thus, has no firm transportation rates to which the lease payments may be compared.

<sup>49</sup> *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003) (*Dominion*); *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185 at P 9; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 70 (2002).

<sup>50</sup> *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

<sup>51</sup> *See* Exhibit N, Line 14. The annualized amount of such lease charge was calculated as follows: \$2,140,916.70 times 12 equals approximately \$25,691,000.

<sup>52</sup> *See* Exhibit N, Line 13 reflecting an estimated incremental total cost of service to construct Dogwood's ownership share of the Dalton Lateral.

under the lease is less than the comparable cost of service if Transco had constructed the facilities, approval of this lease agreement will reduce Transco's costs associated with the project and thus the amount shippers will pay under the recourse rate by an estimated \$20,754,747 per year.<sup>53</sup>

51. The State Commissions argue that Transco has not demonstrated that its annual lease payments will be less than the equivalent cost of service that would apply if Transco directly owned 100 percent of the facilities. The State Commissions assert that Transco's analysis of its annual lease payments is deficient, because while the project lease has a 25-year primary term, Exhibit N only analyzes one year of the lease. Therefore, Transco's analysis does not take into account the impact of depreciation of the leased facilities on the cost of service. As the leased facilities are depreciated over time, the cost of service should decrease due to the decrease in rate base. The State Commissions contend that by limiting its analysis to one year, Transco has failed to show that the lease payments over the life of the lease will be less than the equivalent cost of service that would apply if Transco directly owned the facilities.

52. Transco states that it has included in its certificate application an analysis that includes a comparison of the annual lease charges to an incremental annual cost of service that would apply if Transco constructed and owned 100 percent of the project facilities. Transco states that its analysis used the first year of the lease arrangement consistent with section 157.14(a)(18) of the Commission's regulations, which Transco states requires Transco to calculate its initial recourse rates for the project using a cost of service for the first calendar year of operation after the proposed facilities are placed in service. Thus, Transco argues that when comparing Transco's annual lease payments under the lease arrangement to the estimated annual cost of service assuming Transco constructed and owned Dogwood's share of the corresponding project facilities, Transco appropriately used a first-year cost of service analysis.

53. Transco's analysis using the first year of the lease arrangement is consistent with section 157.14(a)(18) of the Commission's regulations,<sup>54</sup> and our approval of the lease agreement is consistent with previous Commission orders in which the Commission approved the leasing of new capacity being constructed as part of a project based on the

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<sup>53</sup> See Exhibit N, Line 15.

<sup>54</sup> Section 157.14(a)(18)(c)(ii)(a) of the Commission's regulations provides in relevant part that "[w]hen new rates ... are proposed ... [a statement explaining the basis used in arriving at the proposed rate] shall be accompanied by supporting data showing ... system cost of service for the first calendar year of operation after the proposed facilities are placed in service."

costs of that capacity.<sup>55</sup> With the lease agreement in place, Transco's recourse rates are lower than if Transco had constructed the capacity itself, because Transco's cost of service is lower under the lease. The State Commissions are correct that, assuming Transco constructed and owned 100 percent of the facilities, its cost of service should decrease over time. But, as stated above, rates are based on a first year cost of service, and the pipeline is under no obligation to reduce those rates over time. Therefore, the lease arrangement provides lower rates and a benefit to shippers.

54. In addition, we find that the lease arrangement will not adversely affect Transco's existing customers. Transco proposes an incremental recourse rate designed to recover the cost of service attributable to the project facilities, including the payments under the Lease Agreement. Therefore, existing shippers will not subsidize the lease arrangement. In addition, Transco has agreed to separately account for the costs and revenues associated with the leased facilities and to segregate those costs and revenues from its other system costs during the term of the Lease Agreement. Accordingly, the lease arrangement will not result in adverse effects to Transco's existing customers or on any other pipelines or its customers.

55. The State Commissions are concerned that at the termination of the lease agreement, possessory and operational rights to the leased facilities will revert to Dogwood, arguing that the use of the lease ownership structure should not be allowed to evade or weaken the certificate holder's obligations regarding continuity of service. Specifically, the State Commissions assert that Transco has not fully fleshed out the impact of its request that Dogwood, the co-owner of the leased capacity, be exempt from any certificate obligations with regard to the leased facilities. The State Commissions recognize that the reversion at the end of the term of the lease is subject to the receipt of the necessary authorization from the Commission; however, despite that qualification they are concerned that approval of the lease, including the provision regarding what occurs at the termination of the lease, should not prejudice any issues regarding continuity of service, or any other issue, at the end of the lease.<sup>56</sup> The State Commissions assert that the Commission's long-standing policy is that when examining proposals to abandon service, it weighs all relevant factors, but considers "continuity and stability of existing services ... the primary considerations in assessing whether the public convenience and necessity permit abandonment." Accordingly, the State Commissions request that, in the

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<sup>55</sup> See, e.g., *Constitution Pipeline Co.*, 149 FERC ¶ 61,199 (2014); *Tennessee Gas Pipeline Co., L.L.C. and National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,160 (2015).

<sup>56</sup> State Commission's Protest at 17 (citing *Northern Natural Gas Co.*, 142 FERC ¶ 61,120, at PP 10-11 (2013) and *El Paso Natural Gas Co.*, 136 FERC ¶ 61,180, at P 22 (2011)).

event the Commission approves the lease, it should clarify that nothing therein prejudices any issues as to the status of the leased facilities, or the service provided on those facilities, at the end of the lease.

56. Transco asserts that it is not requesting pre-granted abandonment authority at the end of the lease term. Transco further asserts that while the passive owner lessor under the lease arrangement is not required to apply for certificate authority, any certificate authority granted will attach to 100 percent of the project's facilities and not just to Transco's ownership interest. Transco states that if at the end of the lease the lessor desires to use the facilities for a purpose other than that authorized by the certificate, then Transco and the lessor will be required to obtain the necessary abandonment authority under NGA section 7(b) and interested parties will have ample opportunity to participate in the section 7(b) proceeding for such abandonment.

57. The Commission clarifies that upon termination of the lease at the end of its term or otherwise, Transco must continue to provide jurisdictional service on the Dalton Lateral until it requests and is authorized to abandon the capacity under NGA section 7(b). Similarly, if Transco files for authorization to abandon the leased capacity, Dogwood or any other entity seeking to use the capacity for jurisdictional service will need to file for and receive the requisite certification authorizations under NGA section 7(c).

### C. Environment

58. On April 25, 2014, the Commission staff began its environmental review of the Dalton Expansion Project by granting Transco's request to use the pre-filing process and assigning Docket No. PF14-10-000.<sup>57</sup> As part of the pre-filing review, staff participated

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<sup>57</sup> Natural Resources Group, LLC (NRG) was selected at that time as third-party contractor to assist Commission staff in the development of the environmental assessment for the Dalton Expansion Project. In September 2014, Environmental Resources Group (ERM) acquired NRG. Subsequently, ERM notified Commission staff of a possible conflict of interest, as ERM had previously been engaged by Transco to provide air permitting support and air dispersion analyses for inclusion in Transco's Dalton Expansion Project application; ERM included updated Organizational Conflict of Interest forms with its notification. As mitigation for the potential conflict, ERM proposed to establish an internal corporate firewall to isolate NRG and ERM project and client teams for the duration of the respective third-party contractor engagements. This mitigation was found to be acceptable. Though wholly-owned by ERM, NRG operated as a separate entity until after its work for the Commission on the Dalton Expansion Project was completed. Further, while NRG did review the analyses done by ERM for Transco, the air dispersion analyses were also independently reviewed by Commission

(continued...)

in open houses sponsored by Transco in Newnan, Carrollton, Dallas, Cartersville, Calhoun, and Dalton, Georgia between June 9 and September 25, 2014, to explain our environmental review process to interested stakeholders.

59. On October 21, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Dalton Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). The NOI was published in the Federal Register<sup>58</sup> and mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. FERC environmental staff conducted three scoping meetings on November 3, 4, and 5, 2014, in Dalton, Carrollton, and Cartersville, Georgia to receive verbal scoping comments on the project. On November 14, 2014, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project and Request for Comments on Environmental Issues*. This notice was also published in the Federal Register<sup>59</sup> and was mailed to over 1,100 interested parties and property owners affected by the project facilities, notifying them that the scoping period was extended through December 20, 2014.

60. As a result of concerns raised during the pre-filing process by the Georgia Department of Natural Resources (GADNR), the U.S. Fish and Wildlife Service (FWS), and the Nature Conservancy, Transco revised its planned route to avoid and minimize potential environmental impacts on the biologically sensitive Raccoon Creek Watershed. Accordingly, on February 13, 2015, the Commission issued a second *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project and Request for Comments on Environmental Issues*. This notice was published in the Federal Register<sup>60</sup> and was mailed to over 1,270 interested parties,

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staff and the conclusions on this modeling presented in the environmental assessment are those of staff. Moreover, the air permitting support provided by ERM was also independently reviewed by the Georgia Department of Natural Resources - Environmental Protection Division, which issued air quality permits on for Compressor Station 116 and the Looper Bridge Road Meter Station on March 11, 2015 and July 10, 2015, respectively.

<sup>58</sup> 79 Fed. Reg. 64186 (October 28, 2014).

<sup>59</sup> 79 Fed. Reg. 69455 (Nov. 21, 2014).

<sup>60</sup> 80 Fed. Reg. 9710 (Feb. 24, 2015).

including landowners that could be affected by the route variation. Transco held a public open house on February 24, 2015, in Dallas, Georgia to introduce the project to landowners potentially affected by the newly-developed route. Our environmental staff held a fourth scoping meeting in Dallas, Georgia on March 4, 2015, to receive verbal scoping comments from stakeholders about the adjusted route. Eighteen people spoke at the meeting. This newly-developed route, referred to as the Raccoon Creek Alternative, was subsequently incorporated into the application for the project on July 15, 2015.

61. In addition, as noted above, Bartow indicated concern in its motion to intervene that the proposed location of the Dalton Lateral would interfere with its ability to expand two of its elementary schools on land that it specifically acquired for that purpose. In a response to those comments filed on October 21, 2015, Transco stated it had incorporated Route Variation AK as part of the Dalton Lateral – Segment 3, moving the pipeline to a location slightly over 1000 feet from the Taylorsville Elementary School, such that the route no longer bisects the school property. The modified route was reflected in Transco’s July 15, 2015 filing and reviewed in the EA. Regarding the location of the pipeline in the vicinity of the second school, Kingston Elementary School, the pipeline follows an existing overhead powerline, paralleling a corridor located about 1,500 feet west of the school.

62. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (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, socioeconomics, cumulative impacts, and alternatives. The EA addressed all substantive comments raised during the scoping period.

63. The EA was issued for a 30-day comment period and placed into the public record on March 31, 2016. The Commission received several comment letters on the EA from individual stakeholders, the U.S. Environmental Protection Agency (EPA), and the Coosa River Basin Initiative (CRBI) regarding the impacts on the Etowah River, construction techniques, potential impacts on water supply, effects of blasting, cultural resources, cumulative effects, erosion and production and end-user emissions.

#### **1. April 2016 Modifications**

64. On April 13, 2016, Transco filed 27 proposed modifications to its project and on May 19 and 25, 2016, it filed additional information pertaining to these modifications. Transco’s proposed modifications would affect a total of 43 landowners, two of whom were not previously affected by the project. Since these proposals were made after the issuance of the EA, while we will address them in this order, we will consider them under the criteria established in Environmental Condition 5. Environmental Condition 5 contemplates that there might be changes, such as route realignments, facility relocations,

new staging areas, or access roads, identified after a project has been certificated. Requests for such modifications must include, among other information, documentation of affected-landowner approval and information regarding potentially affected cultural resources, endangered species, and environmentally sensitive areas. As detailed below and consistent with the criteria of Environmental Condition 5, we will only grant approval for the modifications for which Transco has both obtained landowner agreements and completed environmental surveys. For the remaining proposed modifications, we will allow Transco to present the required additional information and/or justifications for the changes as required by Environmental Condition 5 of this order.

65. While Transco's proposed modifications would increase the pipeline length by 0.2 mile and total land disturbance by 5.3 acres, the modifications would decrease the amount of forested wetlands impacted by 0.9 acre and eliminate four waterbody crossings. Based on its May 19, 2016 filing, Transco has agreements with 25 of the 43 landowners impacted by the modifications (covering 11 of the 27 modifications). Transco continues to negotiate with the other 18 landowners. Transco has conducted environmental surveys along 20 of the 27 proposed modifications. We have reviewed the available survey reports for the modifications and determined that the modifications approved herein will not significantly increase impacts on sensitive resources.

66. Transco proposed relocation of eight of its mainline valves (MLV). Transco has completed environmental surveys and obtained landowner agreements for the following six modifications: relocation of MLV 3 (from MP 34.5 to MP 34.3), MLV 6 (from MP 67.8 to MP 64.2), and MLV 7 (from MP 77.9 to MP 78.2); shifting MLV 8 at MP 85.3 (no change in MP), and MLV 10 at MP 98.7 (no change in MP); and adding a new MLV at MP 71.8. Having reviewed the submitted information, we approve these modifications.

67. Transco has not completed environmental surveys and has not obtained landowner agreements for the property affected by the relocation of MLV 1 at MP 20.4 (no change in MP). Also, Transco has not obtained landowner agreement for the relocation of MLV 9 (from MP 92.2 to MP 92.3). Accordingly, we will not approve these modifications at this time.

68. Transco has completed environmental surveys and obtained landowner agreements for two modifications along the Dalton Lateral: the addition of extra workspace on the north and south sides of a railroad crossing near MP 58.2 and a reroute of the Dalton Lateral between MPs 71.2 and 71.4 to avoid impacts on Green Pond. We approve these modifications.

69. Transco has not completed environmental surveys and/or obtained landowner agreement for the following eight proposed modifications to the Dalton Lateral: (1) a reroute between MPs 35.9 and 36.4 to the west based on a landowner request; (2) shifting

the crossing of Highway 278 to the west between MPs 40.4 and 40.8 and the addition of two access roads; (3) addition of a cathodic protection site at MP 51.0; (4) reroute to the east between MPs 54.5 and 55.4 to avoid crossing GADNR-owned lands and addition of a new temporary access road; (5) reroute of an access road near MP 56.5; (6) addition of extra workspace at the Highway 278 crossing; (7) reroute and reduction of the bore length at the Interstate 75 crossing between MPs 76.6 and 77.9; and (8) reroute between MPs 95.7 and 96.9 to avoid multiple crossings of Polecat Creek. We do not approve these modifications.

70. Transco also proposes to: (1) added a new access road from the existing Compressor Station 115 to the Dalton Lateral right-of-way; (2) relocate the Beasley Road Meter Station (now called the Lucas Road Meter Station) and add a new tap site and pipeline spur from the Dalton Lateral at MP 53.2 to the new meter station site; and (3) modify the portage path, which will be used to move boats and kayaks around the construction area, on the southern side of the Etowah River. Transco has not completed the environmental surveys of the first of these modifications and has not obtained landowner agreements for all the properties affected by the second and third of these modifications. Therefore, we do not approve these modifications.

71. Transco proposes five modifications that would include locating workspace within streams. Because each of these changes will require modifications to the project's Wetland and Waterbody Construction and Mitigation Procedures (Transco's Procedures; Appendix E of the EA), we will require additional information to evaluate the feasibility of an alternative workspace layout or if additional protection measures can be used to adequately protect the streams. Accordingly, we do not approve these modifications at this time.

72. Finally, Transco proposes to reroute a portion of the Dalton Lateral between MPs 30.3 and 30.4 to the west to avoid impacts on a cemetery and to maintain a 30-foot-wide no-disturbance buffer, as requested by the Georgia State Historic Preservation Office. Transco has neither completed the environmental surveys nor obtained landowner agreements for all the properties affected by this proposed reroute. Therefore, we will not approve this modification. Further, the workspace for this reroute would be located approximately 10 feet from a house that was previously 400 feet from the workspace. Additional information is needed for us to evaluate Transco's request and assess the feasibility of an alternative route or crossing method to avoid impacts on that residence.

73. To summarize, we approve incorporation of eight of Transco's requested modifications, as described above, into the route authorized with this order. The other 19 modifications are not approved. Transco may present the required additional information and/or justifications for these changes with its Implementation Plan and in accordance with Environmental Condition 5 of this order. This condition requires Transco to demonstrate compliance with Section 106 of the National Historic

Preservation Act and Section 7 of the Endangered Species Act prior to receiving approval of any of the requested modifications.

## **2. Comments from the U.S. Environmental Protection Agency**

74. In its May 2, 2016 comment letter, the EPA provided several recommendations and requested that the Commission issue a supplemental EA to address deficiencies identified in staff's EA and to include additional analysis addressing the 27 route modifications proposed after the EA was issued. In response, we address the various comments from EPA in this order and conclude that a supplemental EA for the Dalton Expansion Project is not warranted.

75. First, the EPA recommends we address the project's potential to cause acid rock drainage during construction. Acid-producing rocks are known to occur in Georgia, and typically include graphitic schist, phyllite, slate, coal, and carbonaceous shales, which often contain pyrite. Counties that are crossed by the Project in Georgia where these rocks are known to occur include Paulding, Bartow, and Gordon. Acid-producing rocks are generally recognizable in the field with an overall color of black or very-dark gray. Pyrite has a gold metallic appearance.

76. In response to the EPA's recommendation, Transco agrees to evaluate the potential presence of acid-producing rock or acidic soil along the project route through review of U.S. Geologic Survey geologic maps, U.S. Department of Agriculture - Natural Resources Conservation Service Soil Surveys, and the Soil Survey Geographic database, and to conduct field testing.<sup>61</sup> Transco states that it will file with the Commission, prior to construction, the results of its desktop analysis identifying areas with the potential for acid-producing rock or acidic soils, and a detailed mitigation plan that outlines the procedures for field verification and the mitigation measures that will be implemented during construction.

77. Transco will also include a discussion on acid-producing rock and acidic soils in the environmental training that will be required for environmental inspectors before construction begins to familiarize the environmental inspectors with the specific conditions and issues associated with acid-producing rock and acidic soils. We conclude that Transco's proposed measures are sufficient to address the EPA concerns.

78. The EPA also recommends that we address karst areas of concern identified through desktop review (topographic maps, aerial photographs, and LiDAR) in Bartow

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<sup>61</sup> See Transco's Response to our November 13, 2015 Environmental Data Request, stating it will file the test borings before commencing construction.

and Murray Counties, Georgia. Transco has conducted geophysical investigations at eight locations to gather additional information about these features.<sup>62</sup> Based on anomalies that were identified during the geophysical investigations, soil borings were performed at two locations to further define the features and to determine if mitigation measures may be needed during construction. The results of the soil borings indicated that the conditions at the investigated locations should support the proposed pipeline construction without karst mitigation measures. Three additional areas have been identified for soil borings once access is available prior to construction in order to determine if karst mitigation measures will be required. The pipeline was re-routed away from three of the eight locations where anomalies were identified; therefore soil borings were not performed at those locations. Environmental Condition 12 requires that Transco file a revised *Karst Mitigation Plan* prior to construction that includes the results of geotechnical borings to determine the nature and extent of the anomalies detected during the electric resistivity imaging investigations as well as site-specific mitigation measures (e.g., route adjustment) for any karst features identified. With this additional study, the Commission's review of the results, and Environmental Condition 12, we find the EPA's concerns are adequately addressed.

79. The EPA recommends that we address potential scouring, erosion of river banks, and associated sediment discharges that could impact habitat for federally listed mussels where waterbodies are crossed via dry-ditch and/or wet open crossings. On May 12, 2016, the FWS filed with the Commission its biological opinion (BO) on the project's potential impacts on aquatic species (see Threatened and Endangered Species

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<sup>62</sup> See Transco's Report of Geophysical Services Karst Evaluation filed on August 13, 2015 in this proceeding.

discussion below).<sup>63</sup> The FWS states that federally listed freshwater mussels are not known to occur in the Oostanaula, Coosawattee, and Conasauga River tributaries that the pipeline will cross, with the exception of Holly Creek, where mussel populations occur well upstream of the proposed crossing location. The FWS also states that direct impacts on listed mussels are not anticipated but that erosion and excessive sediment transport from these tributaries due to pipeline construction and right-of-way could impact listed mussels and their designated critical habitat. However, the BO states that as proposed, the project is not likely to jeopardize the continued existence of federally listed freshwater mussels identified as potentially occurring in the project area and is not likely to destroy or adversely modify critical habitat. Based on analysis in the EA and the findings of the FWS' BO, we conclude that additional scour analysis as recommended by the EPA is not warranted.

80. The EPA requests that we assess the cumulative effects of collocating pipeline rights-of-way with existing rights-of-way, and that we evaluate the impacts on sensitive ecosystems crossed by the proposed route. As discussed in section B.3.c of the EA, although the project may contribute to forest fragmentation, collocation and construction in previously disturbed areas will minimize the effects of forest fragmentation and forest edge effect caused by construction of the pipeline.<sup>64</sup> In addition, Transco has deviated from existing rights-of-way in areas where expanding the existing right-of-way would affect sensitive habitats (e.g., portions of the Raccoon Creek watershed, Green Pond, and Drummond Swamp). Further, as noted in the EA, the presence of similar habitat types within the vicinity of the project area will help ensure that the project does not result in population-level or significant measurable negative impacts on birds of conservation concern or other migratory birds.<sup>65</sup>

81. The EPA identifies concerns related to the transfer of hydrostatic test water between watersheds and expresses concerns about water withdrawals. The EPA asserts that the associated aquatic ecosystems should be assessed, particularly for drought conditions, the hydrostatic-testing frequency needed for operations/maintenance, and impacts on federally listed mussel species.

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<sup>63</sup> See FWS's Biological Opinion detailing potential impacts of Transco's proposed Dalton Expansion Project on aquatic species, filed on May 12, 2016 in this proceeding.

<sup>64</sup> EA at 54, *see also* EA at 52-53 (noting that much of the woodland in the project area has already been fragmented by agricultural land, managed timber operations, and other developments).

<sup>65</sup> EA at 54-55.

82. Transco states in its May 17, 2016 response that surface water used for project construction and operations will be removed from and returned to the same watershed (8-digit hydrologic unit code) and that no hydrostatic testing will be performed during operations/maintenance.<sup>66</sup> As stated in section B.2.b of the EA, Transco will be required to obtain authorization from the GADNR prior to any water withdrawals and to comply with all conditions set by the GADNR.<sup>67</sup> Further, Transco will implement the measures outlined in its Procedures (subject to Commission review and modification as necessary) to minimize impacts on waterbodies during withdrawals including maintaining adequate flow rates to protect aquatic life, provide for all waterbody uses, and provide for downstream withdrawals of water by existing users.<sup>68</sup> We conclude that Transco's measures address the concerns expressed by the EPA.

83. The EPA recommends that the EA address the depth of the pipeline to mitigate the potential effects of severe flooding events such as a 500-year flood that could compromise the pipeline due to flood-water scouring of the stream bottom, and cites as an example the weakening and rupture of the Enterprise Product Pipeline that was buried to a depth of 20 feet beneath the Missouri River bed.

84. The Missouri River is the longest river in the United States and has a drainage area of more than half a million square miles. There is no waterbody crossed by the project that is comparable. Moreover, most of the larger waterbodies crossed by the project will be crossed using the horizontal direction drill (HDD) method, resulting in the pipeline being installed more than 30 feet below the streambed. Additionally, the pipeline will be constructed in accordance with Transco's Procedures and be subject to post-construction monitoring to identify areas of exposure as discussed in section A.7.e and Appendix E of the EA.

85. The EPA identifies concerns related to the crossing of three major waterbodies: an unnamed tributary to Jones Branch, an unnamed tributary to Crane Eater Creek, and Pole Cat Creek. Transco states in its May 17, 2016 response that the unnamed tributary to Jones Branch is a man-made intermittent pond that will be crossed using dry crossing methods. The unnamed tributary to Crane Eater Creek is an agricultural stock pond that will be drained under permission of the owner. Finally, the referenced crossing of Pole Cat Creek is no longer part of the proposed project. As outlined in its Procedures, Transco will file detailed, site-specific construction plans and scaled drawings identifying

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<sup>66</sup> Transco's May 17, 2016 Response to the EPA's Comments on the EA.

<sup>67</sup> EA at 40.

<sup>68</sup> *Id.*; see also Environmental Condition 14.

all areas to be disturbed by construction for each major waterbody crossing for the review and written approval (and additional mitigation measures if warranted) by the Director of the Office of Energy Projects prior to construction.

86. The EPA questions the number of streams described in the EA. To clarify, the EA states that the project will cross 55 coldwater fishery streams; 41 of which will be crossed using a dry crossing method and one will be crossed using the HDD method. The remaining coldwater fisheries streams are within the proposed construction workspace but will not be crossed by the pipeline. Based on Transco's April 2016 Supplemental Filing, two additional coldwater fisheries streams will be crossed. Therefore, the current project, as modified, will cross 57 coldwater fisheries, 43 of which will be crossed using a dry crossing method, one will be crossed using the HDD method, and 13 that are within the proposed construction workspace but will not be crossed by the pipeline.

87. The EPA identifies concerns related to the crossing of a conservation easement associated with Snake Creek. This conservation easement was avoided by a route variation that was adopted in July 2015 and was considered in the EA.

88. The EPA identifies concerns related to the future conversion of the proposed pipeline from natural gas transportation to the transportation of natural gas liquids or petroleum products. Transco states that it does not have any plans to abandon or convert the pipeline to natural gas liquids or petroleum products. Prior to any abandonment of the pipeline, Transco would be required to obtain an approval from the Commission under section 7(b) of the NGA.

89. The EPA identifies concerns related to the storage of tert-butyl mercaptan, the odorant used to assist in the detection of pipeline leaks. Transco indicates that odorization facilities are not proposed for any component of the project. The supplemental odorization control proposed by Transco will analyze the gas composition and mercaptan levels in the gas stream and signal the existing odorization stations to inject less mercaptan or to supplement up to the established level. The net effect will be the same amount of mercaptan by volume in the delivered gas stream to the customer. Transco anticipates that the usage of the existing odorization facilities will be reduced.<sup>69</sup>

90. The EPA recommends that the Commission provide an estimate of both the production emissions, including production-related fugitive emissions, and end-user GHG emissions associated with the proposed action in a supplemental NEPA document. As identified by Transco, gas transported by the project will be delivered to the Oglethorpe Power – Chattahoochee Energy Facility and to Atlanta Gas Light. We have

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<sup>69</sup> Transco's May 17, 2016 Response to the EPA's Comments on the EA.

determined that there is no pending construction or air quality permit application pending for the Oglethorpe Power – Chattahoochee Energy Facility. The project would deliver approximately 208 million cubic feet per day to the facility, which may be used for either future expansion or to displace current natural gas supply. Should the gas be used for expansion, there would be an increase in greenhouse gas emissions (GHGs) as well as criteria pollutants. If the natural gas is displacing an existing gas supply, there would be no change in emissions. If the gas is used to displace another fuel, such as oil or coal, then GHGs would most likely be reduced. Regardless, changes in the air permit would require approval by the Georgia Department of Environmental Protection.

91. The remaining 240 million cubic feet per day would be delivered to the Atlanta Gas Light, a local distribution company (LDC). The LDC could distribute the gas to residential, commercial, or industrial customers. Each of these end use scenarios result in very different lifecycle GHG or criteria pollutant emissions. We do not believe the potential increase of emissions associated with the production and combustion of natural gas is causally related to our action in approving this project, nor are the potential environmental effects reasonably foreseeable as contemplated by the Council on Environmental Quality's (CEQ) regulations. Moreover, as the Commission has previously stated, there is no standard method for determining fugitive methane emissions for pipelines and the level of fugitive methane releases during the lifecycle of natural gas are highly debated. Therefore, it is difficult to accurately quantify fugitive emissions of methane.<sup>70</sup> Further, the EA explains that there is no standard methodology to determine how a project's incremental contribution to GHG emissions would result in physical effects on the environment, either locally or globally.<sup>71</sup> We concur.<sup>72</sup> Even if we determined that a lifecycle GHG analysis was warranted, uncertainties regarding both the LDC end uses, as well as numerous production/upstream variables (gas source, pipeline lengths, processing facilities, etc.) would make the analysis too speculative to permit any meaningful consideration. In addition, given that potential production areas are far removed from the geographic scope of the project, identifying emissions of criteria pollutants from production/upstream is even more speculative. Speculative estimates of the end use and production/upstream GHG emissions would not meaningfully inform the Commission's decision. There are no thresholds for

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<sup>70</sup> See *Transcontinental Gas Pipe Line Co. LLC*, 149 FERC ¶ 61,258, at P 109 (2014).

<sup>71</sup> EA at 122.

<sup>72</sup> See, e.g., *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 at P 97, *reh'g denied*, 151 FERC ¶ 61,253 (2015).

significance, nor is there a meaningful method to determine the local or regional incremental impacts on ongoing climate change.

92. The EPA expressed concerns about impacts on carbon sequestration. Currently there are no federal or state regulations regarding carbon sequestration. According to the EPA, carbon sequestration is the process through which plant life removes carbon dioxide from the atmosphere and stores it in biomass. The project will affect approximately 796 acres of forested land, with 400 acres allowed to revert to forest over time. While there will be a long-term effect of reduced carbon sequestration due to removal of trees from the permanent right-of-way, areas of temporary disturbance will be allowed to revert to pre-existing conditions. The young vegetation of the restored temporary right-of-way will continue to perform the carbon sequestration process. The carbon sequestration ability of the permanent right-of-way will be reduced; however, we conclude that the project will not significantly impact cumulative carbon sequestration in the United States. We also do not believe that the potential reduction of greenhouse gas sinks will significantly exacerbate ongoing climate change.

### **3. Etowah River Crossing**

93. The Commission received multiple comments regarding the proposed Etowah River Crossing, including comments from the EPA, the Coosa River Basin Initiative (CRBI), Darrel Cagle, and Troy Harris.

94. The EPA recommends that the EA evaluate blasting impacts on karst terrain, specifically the effects of blasting through karst during the crossing of the Etowah River, and recommends that we address sensitive ecosystem impacts.

95. The only waterbody for which blasting is currently proposed is the Etowah River. As discussed in section B.2.b of the EA, Transco conducted a geotechnical investigation of the Etowah River crossing. Given the degree of karst found during Transco's geophysical investigation, trenching for an open-cut crossing of the Etowah River will be through karst bedrock, which is likely to be conducive to techniques such as rock sawing and hammering. If conditions encountered are as expected, then blasting will not be necessary. However, if blasting becomes necessary, Transco will follow the pre-blasting monitoring requirements and post-blasting mitigation measures contained in its project blasting plan, which includes the development of site-specific mitigation measures. Moreover, Environmental Condition 12 requires that Transco file – for review and approval by the Commission – a revised *Karst Mitigation Plan* prior to construction that will include site-specific mitigation measures for any karst features identified.

96. The EPA requests information regarding compensatory mitigation related to the Etowah River crossing. Compensatory mitigation will be addressed by the U.S. Army Corps of Engineers (COE) during the COE permitting process for the Etowah River crossing.<sup>73</sup>

97. The CRBI questions whether the EA fully evaluated alternative crossing methods and requests that the Commission independently review the feasibility of an HDD crossing of the river. Additionally, the EPA commented that the EA did not include a detailed analysis of the impacts associated with the proposed crossing and requests that turbidity modeling be used to determine impacts. Furthermore, the CRBI and Troy Harris question the reliability of the borings collected within the river and request the results of electric resistivity imaging testing near the river. Lastly, the CRBI, EPA, Darrel Cagle, and Troy Harris express concern regarding blasting and trenching and the resulting turbidity impacts. Troy Harris questions the efficacy of turbidity curtains used during construction, impacts associated with the installation of the curtains, and potential downstream impacts including stream bank erosion and sedimentation affecting a sensitive cultural resource site identified as the Indian Fish Weir.

98. As discussed in the EA, the information provided in Transco's application and supplemental filings is adequate to support the conclusion that the use of the HDD crossing method is not appropriate at this location. Environmental Condition 13 requires that Transco provide, prior to construction, quantitative modeling results of turbidity and sedimentation, including the duration, extent, and magnitude of elevated turbidity levels and sedimentation due to trenching, backfilling, and blasting (should it be required). The condition also requires Transco to file its final Etowah River Turbidity Control and Monitoring Plan, which was developed in coordination with the GADNR and was provided to the FWS and COE for review. The analysis already included in the EA, as supplemented by the environmental conditions, is sufficient to assess the impacts.

99. The CRBI questions the appropriateness of the use of COE Nationwide Permit 12. The COE will make the final determination on which type of permit the project requires.

100. The CRBI requests that the Commission consider an alternative crossing location of the Etowah River that will avoid a wet trench crossing. As indicated in the EA, based on available U.S. Geological Survey data and the results of the field investigations, similar geologic conditions are expected within reasonable proximity to the proposed Etowah River crossing location.<sup>74</sup> Consequently, the alternative route identified by the

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<sup>73</sup> See Transco's May 17, 2016 Response to the EPA's Comments on the EA.

<sup>74</sup> See EA at 24. Environmental Condition 12 requires that, before commencing construction, Transco must file a revised *Karst Mitigation Plan* that includes site-specific

CRBI would likely encounter similar geology as the proposed location, which would preclude the use of an HDD crossing method. In addition, the CRBI's alternative route is approximately 3 miles longer than the proposed route, which would result in additional terrestrial impacts.

101. The CRBI comments that the EA did not consider impacts on recreational use of the Etowah River. Impacts on recreational use of the Etowah River are addressed in section B.5.a of the EA. Transco's Draft Aid to Navigation Plan includes a plan identifying portage locations to be used by recreational users during construction and a detailed signage plan to inform recreational users of access limitations and portage locations.

#### **4. Alternatives**

102. The Commission received several comments on the EA regarding alternatives to the proposed pipeline route, including comments from 1460 Partnership; Evans & Rhodes, LLC; and the First Baptist Church of Atlanta. The 1460 Partnership, LLLP provided a map identifying three specific alternatives that avoided their property. Evans & Rhodes, LLC did not identify a specific alternative route but referenced an alternative route on an adjacent undeveloped property. Based on our review of available information, we determined that these alternatives are similar in length or longer and would cross the same sensitive resources (e.g., forest land) as the corresponding segment of the proposed route without conferring an obvious environmental advantage over the proposed route. Further, these alternatives would require moving the route onto other landowners. For these reasons, we are not authorizing these alternative routes.

103. The First Baptist Church of Atlanta identified an alternative that would follow the church property line, which is located adjacent to an existing powerline right-of-way. Based on a preliminary review of the alternative route, it appears to be feasible and remains on the church property. We agree in this case that co-locating along the power line right-of-way at the edge of the property is preferable to bisecting the property. Therefore, Environmental Condition 24 requires Transco to either modify the pipeline route as requested by the First Baptist Church of Atlanta, provide additional justification why the alternative route cannot be incorporated, or document landowner concurrence with the currently proposed route.

104. David Shumaker identifies an alternative route that would follow the existing access road to Compressor Station 115 then head east along the northern edge of Mr. Shumaker's property where it would connect with the proposed pipeline route.

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mitigation measures for any karst features identified.

Based on a preliminary review of the alternative route, it appears to be feasible without impacting additional landowners. Environmental Condition 24 requires Transco to either modify the pipeline route as discussed above, provide additional justification why the alternative route cannot be incorporated, or document landowner concurrence with the currently proposed route.

## **5. Threatened and Endangered Species**

105. The Commission received several comments on the EA regarding federally and state-listed species, including comments from the EPA and 1460 Partnership. Section B.4. of the EA determines that constructing and operating the project will result in no effect on 13 threatened and endangered species; may affect, but is not likely to adversely affect five threatened and endangered species; and will not contribute to the listing of one candidate species.

106. On April 5, 2016, the FWS filed a letter with the Commission stating that it did not concur with some of our staff's determinations, based largely on the possibility of erosion and sedimentation within affected watersheds. However, the EA does include measures to avoid and minimize potential erosion, turbidity, and sedimentation impacts, as well as effects attributable to hydrostatic test water withdrawals. Based on our past experience with natural gas pipeline construction, the EA concludes that these measures provide adequate protection for all resources that are directly affected and substantially limits the potential for any indirect impacts. However, in deference to the opinions of the FWS, we adopted the FWS determinations in a letter to the FWS dated April 28, 2016. On May 2, 2016, the FWS concurred with our revised determinations. With receipt of the FWS concurrence, and the subsequent BO addressing terrestrial species dated May 9, 2016, the Endangered Species Act Consultation process is complete and, as a result, EA recommendation no. 19 is not included as a condition of this order.

107. In a letter filed on April 28, 2016, Troy Harris identifies concerns about the project's potential impacts on an active bald eagle nest along the Etowah River at Hardin Bridge. Because the closest construction areas are about 1.5 miles from the nest, construction or operation of the project is not likely to affect it.<sup>75</sup>

108. Concerns regarding state-listed species are adequately addressed in section B.4.b of the EA, which concludes that the project is expected to have no impact on 54 of the

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<sup>75</sup> As indicated on page 54 of the EA, Table B.3c-2, our environmental staff completed consultation with the FWS for the bald eagle as part of the Birds of Conservation Concern, which is a subset of the Migratory Bird Treaty Act.

58 state-listed species that are not also federally listed and will have temporary and minor impacts on four species.

## 6. Water Resources

109. On May 2, 2016, the CRBI filed a letter identifying several Clean Water Act section 303(d)-listed impaired waterbodies crossed by the proposed pipeline route that were not specifically discussed in the EA. Based on Transco's proposed construction techniques and the implementation of minimization and mitigation measures as outlined in section B.2.b and Appendix E of the EA, we do not anticipate any impact on the impairment criteria for these waterbodies during construction or operation of the project.

## 7. Land Use

110. Evans & Rhodes, LLC questions the use of Wahoo Overlook Trail as an access road, noting such use could block access to residents along the road. Transco states that it no longer proposes to use this road.<sup>76</sup> If Transco proposes to use this road, it must file a written request for our environmental staff's review and approval.

## 8. Environmental Conclusions

111. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed in accordance with Transco's application and supplement(s), 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.

112. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>77</sup>

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<sup>76</sup> EA Environmental Condition 4.

<sup>77</sup> See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and

(continued...)

#### IV. Conclusion

113. 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 Dalton Expansion Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned on Transco's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations under the NGA including, but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions in Appendix C to this order; and
- (4) execution, prior to commencement of construction, of a firm contracts for the volumes and service terms equivalent to those in its precedent agreement.

(C) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Transco to lease capacity from Dogwood, as described herein and in the application.

(D) 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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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).

(E) 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 goes into service.

(F) 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.

(G) 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.

(H) 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.

(I) 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 (Secretary) within 24 hours.

(J) The State Commissions' protest and request for partial consolidation and evidentiary hearing is denied.

(K) The late motions to intervene are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**  
**Timely Motions to Intervene**

Alabama Gas Corporation  
Atlanta Gas Light Company  
Atmos Energy Marketing, LLC  
Bartow County School System and Bartow County Board of Education  
City of Cartersville, Georgia  
Conoco Phillips Company  
Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works  
Duke Energy Carolinas, LLC  
Municipal Gas Authority of Georgia<sup>78</sup> and Transco Municipal Group<sup>79</sup>  
National Grid Gas Delivery Companies  
New Jersey Natural Gas Company  
NJR Energy Services Company  
North Carolina Utilities Commission and New York State Public Service  
Commission  
Oglethorpe Power Corporation  
Piedmont Natural Gas Company, Inc.  
PSEG Energy Resources & Trade LLC  
SCE & GPSC of North Carolina  
UGI Distribution Company

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<sup>78</sup> The Gas Authority consists, *inter alia*, of the following municipalities which are served directly 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>79</sup> The members of TMG include 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.

**Appendix B**  
**Late Motions to Intervene**

1460 Partnership, LLLP  
Coosa River Basin Initiative  
David L. Shumaker  
Handy Land and Timber, LLC  
Ivan Goldenberg and Christine Cali Snellgrove Glenn  
Paul Corley  
Scott & Judy Mullis, Donna Gordon, Aimee and Phillip Hutzelman, Kathleen and  
Michael Rossi, Darlos and William Biossat, and Cynthia Schiller Jackson  
Southern Company Services, Inc.  
Virginia Corley Casey, Douglas Van Corley, Edward Daniel Corley, Wanda Corley  
Haight, and Mary Corley White

### **Appendix C 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, supplemental filings (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 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 (Director of 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 ensure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from construction and operation of the project.
  
3. **Prior to any construction of the facilities**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' 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 for the project.
  
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**, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets for the project 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 NGA 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 NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. 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 and ware yards, new access roads, and other areas for the project 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 Transco's Plan and/or minor field realignments per landowner needs and requirements that 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:

- (i) implementation of cultural resources mitigation measures;
  - (ii) implementation of endangered, threatened, or special concern species mitigation measures;
  - (iii) recommendations by state regulatory authorities; and
  - (iv) 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**, Transco shall file an Implementation Plan for the project 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 on-site construction and inspection personnel;
  - c. the number of EIs assigned per spread, and how Transco 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 changes), with the opportunity for OEP staff to participate in the training session;
  - 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 chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the environmental compliance training of on-site personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. Transco shall employ one or more EIs per construction spread. 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. 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 **on a weekly basis for the project 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 of Transco's efforts to obtain the necessary federal authorizations;
  - b. the current construction status of each spread 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(s) 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 that 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 commencing service on each discrete facility of the project.** 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 for the project into service,** Transco shall file an affirmative statement, 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 Certificate conditions 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. **Prior to construction**, Transco shall file with the Secretary, for review and approval by the Director of the OEP, a revised Karst Mitigation Plan that includes a comprehensive karst report providing a complete discussion of the desktop reviews and field surveys that were conducted to identify potential karst features along the route. The report shall:
  - a. provide the results of geotechnical borings to determine the nature and extent of the anomalies detected during the electric resistivity imaging investigations;
  - b. provide site-specific mitigation measures for any karst features identified (e.g., route adjustment); and
  - c. provide an analysis to determine the pipeline's intrinsic ability to span subsidence features and provide documentation showing where these data can be found.
13. **Prior to any construction within the Etowah River**, Transco shall file with the Secretary, for review and approval by the Director of OEP, quantitative modeling results of the turbidity and sedimentation associated with construction across the Etowah River. The modeling shall consider blasting activities; trench excavation and backfilling; and the installation and removal of the riprap, equipment bridges, and turbidity curtains. The results of the analysis shall illustrate the duration, extent, and magnitude of elevated turbidity levels and sedimentation. In addition, Transco shall provide its final Etowah River Turbidity Control and Monitoring Plan.
14. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director OEP, an updated version of its Procedures that complies entirely with section IV.A.1.d of the FERC Procedures.
15. **Prior to construction**, Transco shall file with the Secretary further site-specific justification for or modify its proposed workspaces related to waterbodies noted as "without sufficient justification" in Appendix L of the EA and file updated alignment sheets, as appropriate, for review and written approval by the Director of OEP.
16. **Prior to construction**, Transco shall file with the Secretary further site-specific justification for or modify its proposed workspaces related to wetlands noted as "without sufficient justification" in Appendix L of the EA and file updated alignment sheets, as appropriate, for review and written approval by the Director of OEP.

17. **Prior to construction**, Transco shall file with the Secretary a copy of its final wetland mitigation plan and documentation of COE approval of the plan.
18. **Prior to construction**, Transco shall file with the Secretary a plan describing the feasibility of incorporating plant seeds that support pollinators into the seed mixes used for restoration of construction workspaces. These plans shall also describe Transco's consultations with the relevant federal and/or state agencies.
19. Transco **shall not begin implementation** of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use staging storage, or temporary work areas and new or to-be-improved access roads **until**:
  - a. Transco files with the Secretary:
    - i. all cultural resources survey reports, including special studies such as ground penetrating radar, evaluation reports, avoidance plans and treatment plans;
    - ii. comments on survey reports, special studies, evaluation reports, avoidance plans and treatment plans from the State Historic Preservation Office, as well as any comments from federally recognized Indian tribes;
    - iii. the Advisory Council on Historic Preservation is afforded an opportunity to comment on the undertaking if historic properties would be adversely affected; and
  - b. the FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All material filed with the Commission that contains **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.**"

20. If changes to the project construction schedule occur that would materially impact the amount of NO<sub>x</sub> emissions generated in a calendar year, Transco shall file, in its weekly status report, revised construction emissions estimates prior to implementing the schedule modification with the Secretary demonstrating that the annual NO<sub>x</sub> emissions resulting from the revised construction schedule do not exceed general conformity applicability thresholds.
21. **Prior to construction of the I-20, Highway 120, and Joe Frank Harris Parkway locations**, Transco shall file with the Secretary, for 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 proposed drilling operations at noise-sensitive areas (NSAs) with predicted noise levels above 55 decibels on the A-weighted frequency scale (dBA). During drilling operations, Transco shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an day-night averaged sound level ( $L_{dn}$ ) of 55 dBA at the NSAs.

22. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing Compressor Station 116 into service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible power load and provide the full power load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at any compressor station at interim or full power load conditions exceeds 55 dBA  $L_{dn}$  at any nearby NSAs, Transco shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
23. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing the Murray Meter Station in service. If the noise attributable to the operation of the meter station at maximum flow exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, Transco shall install additional noise controls to meet that level **within 1 year** of the in-service date. Transco shall confirm compliance with the  $L_{dn}$  of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
24. Transco shall incorporate the alternative route identified by Mr. Shumaker (MPs 0.0 to 0.7) and the route identified by the First Baptist Church of Atlanta (MPs 25.0 to 26.0) into the project alignment. If Transco determines that either of the alternative routes cannot be constructed, Transco must provide additional justification for the review of FERC staff or document landowner concurrence with the currently proposed route.