

157 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP

Docket Nos. CP16-3-000
CP16-3-001

ORDER ISSUING CERTIFICATE
AND APPROVING ABANDONMENT

(Issued December 21, 2016)

1. On October 8, 2015, Texas Eastern Transmission, LP (Texas Eastern) filed an application, as amended on March 26, 2016, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct, operate, and abandon certain pipeline and compression facilities in Alabama, Kentucky, Mississippi, Ohio, Pennsylvania, and Tennessee. As discussed below, the Commission will grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Texas Eastern, a corporation organized under the laws of Delaware,³ is a natural gas company as defined by NGA section 2(6).⁴ Its system extends in a northeast direction from Texas, Louisiana, and the Gulf of Mexico, through Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

¹ 15 U.S.C. § 717f(b), (c) (2012).

² 18 C.F.R. pt. 157 (2016).

³ Texas Eastern is an indirect, wholly owned subsidiary of Spectra Energy Partners, LP.

⁴ 15 U.S.C. § 717a(6) (2012).

3. Texas Eastern requests authorization for three individual projects in this proceeding – the Access South, Adair Southwest, and Lebanon Extension Projects. In the three projects, Texas Eastern proposes to construct and operate approximately 16.3 miles of pipeline loop on its existing mainline, add a new 16,875 horsepower (hp) compressor unit at an existing compressor station, and modify 12 existing compressors to allow for reverse flow capabilities for the projects. Specifically, in regard to the Access South and Adair Southwest Projects,⁵ Texas Eastern proposes to:

- construct and operate approximately 9.1 miles of 36-inch-diameter pipeline loop in Meigs and Athens Counties, Ohio;
- construct and operate approximately 4.6 miles of 36-inch-diameter pipeline loop in Noble and Monroe Counties, Ohio;
- construct and operate approximately 0.5 mile of 16-inch-diameter pipeline loop and tie-in facilities, extending from the existing Kosciusko Compressor Station to an existing metering facility in Attala County, Mississippi, and abandon the existing 6-inch-diameter pipeline between these two points;⁶
- install a new 16,875 hp electric motor-driven compressor unit at its existing Tompkinsville Compressor Station in Monroe County, Kentucky;
- relocate two existing launchers/receivers and install new valves in Athens County, Ohio;
- install a filter separator at the Kosciusko Compressor Station in Attala County, Mississippi;⁷ and
- modify ten compressor stations to allow bi-directional compression, add gas cooling and new impellers, or modify meters and regulators.⁸

⁵ Texas Eastern apportions 61.5 percent of the costs and capacity associated with the proposed facilities to the Access South Project and 38.5 percent of the costs and capacity to the Adair Southwest Project, unless otherwise noted.

⁶ Texas Eastern apportions 100 percent of the costs and capacity associated with the 0.5-mile-long pipeline to the Access South Project.

⁷ Texas Eastern apportions 100 percent of the costs and capacity associated with the filter separator to the Access South Project.

In the Lebanon Extension Project, Texas Eastern proposes to:

- construct and operate approximately 2.1 miles of 36-inch-diameter pipeline loop in Monroe County, Ohio;
- install two launchers/receivers and new valves in Monroe County, Ohio; and
- modify the existing Somerset and Lebanon Compressor Stations in Perry and Warren Counties, Ohio, respectively, to allow bi-directional compression, add gas cooling and new impellers, or modify meters and regulators.

4. The three projects will enable Texas Eastern to provide 622,000 dekatherms (Dth) per day of firm transportation service on its mainline from a receipt point in Uniontown, Pennsylvania, to Midwest and Southeastern markets. Specifically, the proposed Access South Project facilities will enable Texas Eastern to provide 320,000 Dth per day of firm transportation service to delivery points in Access Area Zone ELA and Market Zone M1 in Attala County, Mississippi. The delivery points include interconnections with Gulf South Pipeline Company, LP and Southern Natural Gas Company, L.L.C. The proposed Adair Southwest Project facilities will enable Texas Eastern to provide 200,000 Dth per day of firm transportation service to delivery points in Market Zone M2 in Adair County, Kentucky. The delivery points include an interconnection with Columbia Gulf Transmission, LLC. The proposed Lebanon Extension Project facilities will enable Texas Eastern to provide 102,000 Dth per day of firm transportation service to delivery points in Market Zone M2 near Lebanon, Ohio. The delivery points include interconnections with Texas Gas Transmission, LLC and the City of Hamilton, Ohio.

⁸ The compressor stations that Texas Eastern proposes to modify include the Holbrook Compressor Station in Greene County, Pennsylvania; Berne Compressor Station in Monroe County, Ohio; Athens Compressor Station in Athens County, Ohio; Owingsville Compressor Station in Bath County, Kentucky; Danville Compressor Station in Lincoln County, Kentucky; Tompkinsville Compressor Station in Monroe County, Kentucky; Gladeville Compressor Station in Wilson County, Tennessee; Barton Compressor Station in Colbert County, Alabama; Egypt Compressor Station in Monroe County, Mississippi; and Kosciusko Compressor Station in Attala County, Mississippi. Texas Eastern apportions 100 percent of the costs and capacity of the modifications to the Gladeville, Barton, Egypt, and Kosciusko Compressor Stations to the Access South Project.

5. Texas Eastern held separate open seasons for the Access South and the Adair Southwest Projects from July 25 to August 29, 2014. It also held an open season for the Lebanon Extension Project, from February 27 to March 27, 2015. As a result of the open seasons, Texas Eastern executed binding precedent agreements for firm transportation service with Rice Energy Marketing LLC (Access South Project), Range Resources-Appalachia, LLC (Adair Southwest Project), and Gulfport Energy Corporation and the City of Hamilton, Ohio (Lebanon Extension Project). The precedent agreements subscribed all of the capacity associated with the three projects.

6. Texas Eastern estimates that the construction costs associated with the three proposed projects will total \$442,302,506.⁹ It states that the projects will be financed from funds on hand or funds obtained through short-term financing agreements. Texas Eastern proposes separate incremental recourse rates for firm transportation service on each project, as described below. Texas Eastern states that the firm transportation services for the projects' shippers will be provided at either the applicable project recourse rate or at fixed negotiated rates.

II. Notice, Interventions, and Comments

7. Notice of Texas Eastern's application in Docket No. CP16-3-000 was published in the *Federal Register* on October 28, 2015, with comments due November 12, 2015.¹⁰ Notice of Texas Eastern's amended application in Docket No. CP16-3-001 was published in the *Federal Register* on April 20, 2016, with comments due by May 5, 2016.¹¹ The parties listed in Appendix A to this order filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹²

8. Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc.; Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc.; and Vectren Energy Delivery of Ohio, Inc. (collectively, Vectren Companies) and Rice Energy Marketing LLC filed untimely motions to intervene on February 1 and

⁹ Application at Exhibit K.

¹⁰ 80 Fed. Reg. 65,998 (2015).

¹¹ 81 Fed. Reg. 23,290 (2016).

¹² 18 C.F.R. § 385.214 (2016).

August 8, 2016, respectively. We will grant Vectren Companies' and Rice Energy Marketing LLC's late motions to intervene.¹³

9. Allegheny Defense Project, the Center for Biological Diversity, the Freshwater Accountability Project, Heartwood, Kentucky Heartwood, and the Ohio Valley Environmental Coalition filed motions to intervene that also included comments. Specifically, they state that authorizing the projects would lead to induced production of natural gas in the Marcellus and Utica Shale gas regions and impacts on water resources. Texas Eastern filed an answer to the comments. The comments are addressed in the Environmental Assessment (EA).

10. The Natural Gas Supply Association and the City of Hamilton, Ohio filed comments in support of Texas Eastern's proposals.

III. Discussion

11. Since the proposed facilities include the abandonment of existing facilities and the construction and operation of facilities to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹⁴

A. Application of the Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

¹³ See 18 C.F.R. § 385.214(d) (2016).

¹⁴ 15 U.S.C. § 717f (b), (c), (e) (2012).

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 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.

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

14. Texas Eastern's proposals satisfy the threshold requirement that it financially support the projects without relying on subsidization from its existing customers. Texas Eastern's proposed incremental base reservation rate for each project is based on the cost of the facilities recovered over the incremental project capacity. Each of the proposed incremental rates is designed to recover the full cost of the expansion and is higher than the applicable system rate. Thus, we find that Texas Eastern's existing shippers will not subsidize the expansion projects.

15. The proposed projects will not degrade service to existing customers. In addition, there will be no adverse impact on any other pipelines in the region or their captive customers, because the proposal is not intended to replace service on other pipelines. Further, no pipeline company or their captive customers have protested the application.

16. We also find that Texas Eastern's proposed projects will have minimal impacts on landowners and surrounding communities. Texas Eastern has designed its projects so that, to the extent practicable, it will construct the proposed facilities using existing rights-of-way and previously disturbed property and that all new compression and other compressor station modifications will be within the fence line of existing facilities.¹⁶

17. The proposed projects will enable Texas Eastern to provide 622,000 Dth per day of firm transportation service for customers that signed precedent agreements for the total capacity of all three projects. Based on the benefits the projects will provide and the minimal adverse effect on existing customers, other pipelines and their captive

¹⁶ Application at 12.

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 Texas Eastern's proposals, as conditioned in this order. Further, we find that the public convenience or necessity permits Texas Eastern to abandon a 0.5-mile, 6-inch-diameter pipeline between the Kosciusko Compressor Station and an existing meter station in Attala County, Mississippi.

B. Rates

18. Commission policy generally requires that incremental rates be charged for expansions, if the incremental rate exceeds the maximum system-wide recourse rate.¹⁷ Texas Eastern proposes a separate incremental firm recourse rate for each of the projects.

1. Firm Recourse Rate

a. Access South Project

19. Texas Eastern estimates the cost of the Access South Project to be \$256,492,009. Texas Eastern proposes to establish an initial incremental firm recourse rate consisting of a reservation rate of \$20.092 per Dth and a usage charge of \$0.0045 per Dth.¹⁸ The proposed recourse rate is based on a Year 1 cost of service of \$77,153,939, divided by a transportation quantity of 3,840,000 Dth (calculated by multiplying 320,000 Dth by 12 months).

20. Texas Eastern's proposed incremental monthly reservation rate of \$20.092 per Dth is higher than its current generally-applicable system reservation rate for transportation from Market Zone M2 to Supply Zone ELA of \$10.1180 per Dth¹⁹ and the rate for transportation from Market Zone M2 to Market Zone M1 of \$7.9660 per Dth. We have reviewed the proposed cost of service and the proposed monthly incremental reservation rate and find them to be reasonable.

¹⁷ *Certificate Policy Statement*, 88 FERC ¶ 61,227 at 61,745.

¹⁸ Texas Eastern's tariff has a usage-1 charge, which reflects variable costs, and a usage-2 charge, which is an excess or overrun rate applicable when the actual service level is in excess of 110 percent of the scheduled service level for such day. For purposes of this discussion, the term "usage" refers to the usage-1 charge.

¹⁹ The applicable system reservation charge was determined as the sum of the Access Zone ELA to AAB reservation charge of \$2.1520 per Dth, plus Market Zone M1 to Market Zone M2 reservation charge of \$7.9660 per Dth.

21. Texas Eastern proposes to establish an incremental usage charge of \$0.0045 per Dth. Texas Eastern calculated the usage charge by dividing its annual variable costs of \$364,367²⁰ by 81,760,000 Dth (calculated by multiplying 320,000 Dth by 365 days by 70 percent utilization). This charge is lower than Texas Eastern's maximum usage charge of \$0.0453 per Dth for transportation from Market Zone M2 to Access Zone ELA and the maximum usage charge of \$0.0407 per Dth for transportation from Market Zone M2 to Market Zone M1.²¹ Where an incremental usage charge is lower than the system usage charge, we have found it appropriate to use the system usage charge. Thus, we will direct Texas Eastern to use its system usage charge for the comparable transportation path as the initial recourse usage charge for the Access South Project.

b. Adair Southwest Project

22. Texas Eastern estimates the cost of the Adair Southwest Project to be \$126,784,135. Texas Eastern proposes to establish an initial incremental firm recourse rate, consisting of a monthly reservation rate of \$12.886 per Dth and a usage charge of \$0.0042 per Dth. The proposed recourse rate is based on a Year 1 cost of service of \$30,927,486, divided by a transportation quantity of 2,400,000 Dth (calculated by multiplying 200,000 Dth by 12 months).

23. Texas Eastern's proposed incremental monthly reservation rate of \$12.886 per Dth is higher than its current generally-applicable system rate for transportation entirely within Market Zone M2 of \$6.1610 per Dth. We have reviewed the proposed cost of service and the proposed monthly incremental reservation rate and find them to be reasonable.

24. Texas Eastern proposes to establish an incremental usage charge of \$0.0042 per Dth. Texas Eastern calculated the usage charge by dividing its annual variable costs of \$216,043²² by 51,100,000 Dth (calculated by multiplying 200,000 Dth

²⁰ See Application Exhibit P at 8. To classify fixed and variable costs, Texas Eastern provided in Exhibit P a breakdown of projected Operation and Maintenance (O&M) and Administration and General (A&G) expenses by FERC account number and labor and non-labor costs for the proposed new compression and measurement and regulation facilities.

²¹ At a 100 percent load factor, the usage charge would be \$0.0031 per Dth (\$364,367, divided by 116,800,000 Dth (calculated by multiplying 320,000 Dth by 365 days)), which is also less than the system usage charges.

²² See Application Exhibit P at 2.

by 365 days by 70 percent utilization). This charge is lower than Texas Eastern's maximum usage charge of \$0.0279 per Dth for transportation entirely within Market Zone M2.²³ Where an incremental charge is lower than the system charge, we have found it appropriate to use the system charge. Thus, we will direct Texas Eastern to use its system usage charge for the comparable transportation path as the initial recourse usage charge for the Adair Southwest Project.

c. Lebanon Extension Project

25. Texas Eastern estimates the cost of the Lebanon Extension Project to be \$59,026,362. Texas Eastern proposes to establish an initial incremental firm recourse rate, consisting of a reservation rate of \$11.654 per Dth and a usage charge of \$0.0000 per Dth. The proposed recourse rate is based on a Year 1 cost of service of \$14,265,061, divided by a transportation quantity of 1,224,000 Dth (calculated by multiplying 102,000 Dth by 12 months).

26. Texas Eastern's proposed incremental monthly reservation rate of \$11.654 per Dth is higher than its current generally-applicable system rate for transportation entirely within Market Zone M2 of \$6.1610 per Dth. We have reviewed the proposed cost of service and the proposed monthly incremental reservation rate and find them to be reasonable.

27. Texas Eastern proposes to establish an incremental usage charge of \$0.0000 per Dth because there are no variable costs associated with the Lebanon Expansion Project. Where an incremental charge is lower than the applicable system charge, it is appropriate to use the applicable system charge. Thus, since the proposed incremental usage charge is lower than its existing usage charge, we will direct Texas Eastern to use its system usage rate as the initial recourse usage charge for the Lebanon Extension Project.²⁴

2. Interruptible Recourse Rate

28. Texas Eastern does not state the rate it will charge for interruptible service made available by the proposed projects. Our policy requires a pipeline to charge its currently-effective rate for service under Rate Schedule IT for any interruptible service rendered on

²³ At a 100 percent load factor, the usage charge would be \$0.0030 per Dth (\$216,043, divided by 73,000,000 Dth (calculated by multiplying 102,000 Dth by 365 days)), which is also less than the existing system usage charge.

²⁴ See *Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,191, at P 22 (2016).

additional capacity made available as a result of incremental projects that are integrated with existing pipeline facilities.²⁵ Thus, we will direct Texas Eastern to charge its applicable system interruptible rate.

3. Fuel, Lost and Unaccounted For Gas, and Electric Power Cost Charges

29. Texas Eastern proposes to track fuel usage and lost and unaccounted for gas (LAUF) under the Applicable Shrinkage Adjustment (ASA) provision in section 15.6 and the electric power costs through the electric power cost provision in section 15.1 of the General Terms and Conditions of its tariff. The work papers underlying Texas Eastern's proposed initial ASA and electric power cost charges for the three projects reflect a 70 percent load factor utilization of Texas Eastern's system.²⁶

30. For the Access South and the Adair Southwest Projects, Texas Eastern proposes to establish an initial ASA of 4.32 and 3.68 percent and an initial electric power cost charge of \$6.1352 and \$1.6956 per Dth, respectively. The proposed incremental charges for the Access South and the Adair Southwest Projects are greater than Texas Eastern's generally-applicable ASA percentage and its electric power cost charges for the applicable receipt and delivery point paths for both the winter (December through March) and summer (April through November) periods. Since existing shippers will not be subsidizing the expansion capacity, and Texas Eastern proposes to track fuel usage, LAUF, and electric power costs pursuant to its tariff, we will approve Texas Eastern's incremental fuel use, LAUF, and electric power cost charges for the Access South and the Adair Southwest Projects.

31. For the Lebanon Extension Project, Texas Eastern proposes an ASA of 1.80 percent and an electric power cost charge of \$0.3596 per Dth. Texas Eastern's proposed ASA percentage is less than its generally-applicable winter ASA percentage and greater than its generally-applicable percentage for the summer for a transportation path entirely within Market Zone M2. Consistent with our holdings above on the usage charges, we will direct Texas Eastern to charge the higher of its incremental or generally-

²⁵ We require a pipeline to charge the applicable system interruptible rate on expansion facilities because the pipeline generally is unable to determine whether the capacity available on a given day is due to the existing facilities or to the new, integrated expansion facilities. See, e.g., *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010); *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 313-14, 326 (2006).

²⁶ Application at Exhibit Z-2.

applicable ASA percentage. The electric power cost charge is greater than Texas Eastern's generally-applicable electric power cost charge. Accordingly, we will approve Texas Eastern's proposal to establish an incremental electric power cost for the Lebanon Expansion Project.

4. Reporting Incremental Costs and Revenue

32. To ensure that costs are properly allocated between Texas Eastern's existing shippers and the incremental services proposed in this proceeding, we will require Texas Eastern to keep separate books and accounting of costs, including fuel and electric power costs attributable to the proposed incremental services. Further, the books should be maintained with applicable cross-reference as required by section 154.309 of the Commission regulations.²⁷ 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 provided must be consistent with Order No. 710.²⁸

5. Negotiated Rates

33. Texas Eastern states that it will provide services to the projects' shippers at either the applicable project recourse rate or at fixed negotiated rates in accordance with section 29 of the General Terms and Conditions of its tariff. For shippers that elect to pay a negotiated rate, Texas Eastern must file either the negotiated rate agreements or tariff records setting forth the essential terms of its negotiated rate agreements in accordance with the Alternative Rate Policy Statement²⁹ and the Commission's

²⁷ 18 C.F.R. § 154.309 (2016).

²⁸ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

²⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194 (1996).

negotiated rate policies.³⁰ These filings must be made at least 30 days, and not more than 60 days, before the proposed effective date of such rates.³¹

6. Pro Forma Tariff Records

34. In Exhibit P, Texas Eastern included *pro forma* tariff records incorporating incremental rates for each of the three projects. We direct Texas Eastern to file tariff records that are consistent with its proposed *pro forma* tariff records, subject to the conditions discussed above, not less than 30 days, nor more than 60 days, prior to the in-service date of the projects.

C. Environmental Analysis

35. On March 31, 2015, in Docket No. PF15-17-000, Commission staff began its environmental review of the Access South, Adair Southwest, and the Lebanon Extension Projects by granting Texas Eastern's request to use the pre-filing process. As part of the pre-filing review, Commission staff participated in open houses sponsored by Texas Eastern in Sarahsville and Pomeroy, Ohio on May 18 and May 19, 2015, respectively, to explain our environmental review process to interested stakeholders.

36. On August 11, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). On May 17, 2016, following Texas Eastern's filing of an amendment to its application in Docket No. CP16-3-001, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment* (Supplemental NOI). The NOI was mailed to federal, state, and local government representatives and agencies; elected officials; affected landowners; environmental and public interest groups; potentially interested Native American tribes; other interested parties; and local libraries, newspapers, and radio stations. The Supplemental NOI was sent to landowners

³⁰ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

³¹ 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. 18 C.F.R. § 154.112(b) (2016). *See also, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

within 0.5 mile of the proposed compressor stations who had not been included in Texas Eastern's original landowner list and was provided to the parties.³²

37. In response to the NOI, the Commission received environmental comments from the Ohio Department of Natural Resources (DNR), the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers, a landowner, and combined comments from the Allegheny Defense Project, Buckeye Forest Council, Center for Biological Diversity, Freshwater Accountability Project, Heartwood, Kentucky Heartwood, and the Ohio Valley Environmental Coalition. The primary issues raised by the commentors included the location of pipeline facilities on an affected landowner's property; potential effects of the projects on federal-listed threatened and endangered species, state-listed endangered species, migratory birds, and streams and wetlands; permitting requirements; direct, indirect, and cumulative impacts of the projects; connected actions; and the need to prepare a programmatic environmental impact statement.³³ In response to the Supplemental NOI, we received a letter from FWS, Region 3, stating that it had no comments on the projects.

38. To satisfy the requirements of the National Environmental Policy Act (NEPA),³⁴ Commission staff prepared an EA for Texas Eastern's proposals that was placed in the public record on August 8, 2016. The analysis in the EA addresses water resources, geology, soils, vegetation and wildlife, land use, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. Additionally, the EA addresses that the Commission does not have a program or policy to promote shale gas development; therefore, a programmatic action does not exist to analyze in a NEPA document.

39. Commission staff has completed consultation with the FWS regarding the American burying beetle, the Indiana bat, and the northern long-eared bat.³⁵ Therefore, we have deleted Environmental Condition 13 that was recommended in the EA from the conditions in Appendix B to this order.

³² The Supplemental NOI included a corrected landowner list because Texas Eastern omitted some landowners within 0.5 mile of the proposed compressor stations.

³³ The landowner that commented in response to the NOI is no longer affected by the project because Texas Eastern shortened the length of the pipeline loop to avoid the landowner's property.

³⁴ 42 U.S.C. §§ 4321-4347 (2012).

³⁵ FWS September 8, 2016 letter.

40. On August 8, 2016, Oil Change International filed comments, consisting of one paragraph and an attached 32-page report, in 11 pipeline certificate proceedings, including the matter at hand. Oil Change asserts that there should be a climate test for all natural gas infrastructure, that, in light of the Council on Environmental Quality's (CEQ) August 1, 2016 *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in Natural Gas Policy Act Reviews*, "the alignment of natural gas infrastructure permitting with national climate goals and plans should become a priority for FERC and other federal government agencies,"³⁶ and that the Commission should "conduct full Greenhouse Gas impact analysis as part of the NEPA process for all listed projects."³⁷ The report asserts generally that increased U.S. natural gas production in the Appalachian Basin is not consistent with safe climate goals, and that proposed pipeline projects will increase takeaway capacity from the basin and provide financial incentives for increased production.

41. The comments and the report provide no specific information about the Access South, Adair Southwest, and Lebanon Extension Projects (or any of the other listed projects). Accordingly, this material does not assist us in our analysis of the projects. We note that we did analyze the greenhouse gas impacts of the proposed projects as part of our NEPA and NGA review in this case.³⁸ In addition to the information contained in the EA, staff has calculated that, if all 622,000 Dth per day were sent to combustion end uses, downstream end-use could result in about 12 million metric tons of CO₂ per year. We note that this CO₂ estimate represents an upper bound for CO₂ emissions that could result from the end-use combustion of gas transported by this project. This estimate assumes the maximum capacity of gas is transported 365 days per year, which is rarely the case because projects are designed for shippers' peak day use. In addition, some of the gas may displace other fuels, which could lower total CO₂ emissions. It may also displace gas that otherwise would be transported via different means, resulting in no

³⁶ Oil Change August 8, 2016 comments (citing Memorandum from CEQ to Heads of Federal Departments and Agencies (August 1, 2016)). Oil Change filed these comments on behalf of the Sierra Club, Earthworks, Appalachian Voices, Chesapeake Climate Action, 350.org, Bold Alliance, Environmental Action, Blue Ridge Environmental Defense League, Protect Our Water, Heritage and Rights (Virginia & West Virginia), Friends of Water, Mountain Lakes Preservation Alliance, Sierra Club West Virginia, and Sierra Club Virginia.

³⁷ Oil Change August 8, 2016 Comments at 1.

³⁸ See, e.g., EA at 85, 92, 93 table B-13, 111.

change in CO2 emissions. As such, it is unlikely that this total amount of CO2 emissions would occur, and emissions are likely to be lower than the above estimate.

42. As to the more global issues raised by Oil Change, while the Commission does not utilize a specific “climate test”, we do examine the impacts of the projects before us, including impacts on climate change. Under NEPA, we are required to take a “hard look” at the environmental impacts of the proposed project and we have done so. To the extent that Oil Change suggests an alignment of project permitting with national climate change goals, we note that it is for Congress, the Executive Branch, and agencies with jurisdiction over broad environmental issues to establish such goals; our role under the NGA is considerably more limited, and we have no authority to establish national environmental policy.

43. We have reviewed the information and analysis contained in the record, including the EA, concerning the projects’ potential environmental impacts. Based on our consideration of this information and the discussion above, we conclude that if constructed and operated in accordance with Texas Eastern’s application and supplements and in compliance with the environmental conditions in Appendix B to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

44. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and replacement of facilities approved by this Commission.³⁹

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

³⁹ See 15 U.S.C. § 717r(d) (2012) (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 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).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct and operate the Access South, Adair Southwest, and Lebanon Extension Projects, as described and conditioned herein, and as more fully described in its application.

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

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

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

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

(4) executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to commencing construction.

(C) Texas Eastern 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 Texas Eastern. Texas Eastern shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(D) Texas Eastern's proposal to establish incremental reservation charges for the three projects is approved.

(E) Texas Eastern is required to charge its generally-applicable usage charges for the three projects, as more fully described above.

(F) Texas Eastern's proposal to charge its incremental ASA percentage and electric power cost charge is approved, as discussed in the body of this order.

(G) Texas Eastern shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(H) Texas Eastern shall file actual tariff records with the incremental rates not less than 30 days, and not more than 60 days, prior to the date the projects' facilities go into service.

(I) Texas Eastern shall file its negotiated rate agreements, or a tariff record describing the essential elements of the agreements, not less than 30 days and not more than 60 days prior to the date the projects' facilities go into service.

(J) Texas Eastern is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order.

(K) Texas Eastern must notify the Commission within 10 days of the abandonment of the facilities discussed in Ordering Paragraph J.

(L) The untimely motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Interventions

Parties Filing Timely Motions to Intervene in Docket No CP16-3-000:

- Allegheny Defense Project
- Atmos Energy Corporation
- Atmos Energy Marketing LLC
- Center for Biological Diversity
- Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works (filing jointly)
- Duke Energy Carolinas, LLC; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Progress, LLC
- Exelon Corporation
- Freshwater Accountability Project
- Heartwood
- Kentucky Heartwood
- The Municipal Defense Group
- National Fuel Gas Distribution Corporation
- National Grid Gas Delivery Companies
- New Jersey Natural Gas Company
- NJR Energy Service Company
- Ohio Valley Environmental Coalition
- Piedmont Natural Gas Company, Inc.
- PSEG Energy Resources & Trade LLC
- Range Resources-Appalachia LLC

Parties Filing Timely Motions to Intervene in Docket No CP16-3-001

- Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works (filing jointly)

Appendix B

Environmental Conditions

1. Texas Eastern shall follow the construction and abandonment procedures and mitigation measures described in its application and supplements including responses to staff data requests and as identified in the EA, unless modified by this Order. Texas Eastern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the projects and abandonment activities. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation, and activities associated with abandonment.

3. **Prior to any construction**, Texas Eastern 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.

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 or abandonment**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the 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.

Texas Eastern'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. Texas Eastern's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Texas Eastern 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, laydown yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction or abandonment begins,** Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Eastern 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 Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the projects progress and personnel change);
 - f. the company personnel and specific portion of Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Texas Eastern shall employ at least one EI 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 Environmental Condition 6 above) and any other authorizing document;
 - c. empowered to order the 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 that 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, Texas Eastern shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Texas Eastern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the projects, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any of the projects' facilities**, Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Eastern must receive written authorization from the Director of OEP **before placing the projects into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the projects are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service and within 30 days of completing the abandonment of the authorized facilities**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and abandoned 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 Texas Eastern has complied with or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Texas Eastern shall conduct, with the well-owner's permission, pre- and post-construction monitoring of well yield and water quality for all private water wells within 150 feet of construction work areas. **Within 30 days** of placing the facilities in service, Texas Eastern shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

13. Texas Eastern shall **not begin** construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads for the projects **until**:
 - a. Texas Eastern files with the Secretary the Ohio State Historic Preservation Officer's comments on the avoidance plan for site 33AT1042 and the two rock overhangs; and
 - b. the Director of OEP approves the plan and notifies Texas Eastern in writing that construction may proceed.

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

14. Texas Eastern shall file a noise survey with the Secretary **no later than 60 days** after placing the Tompkinsville Compressor Station into service. If a full power load condition noise survey is not possible, Texas Eastern shall provide an interim survey at the maximum possible power load and provide a full power load survey **within six months**. If the noise attributable to the operation of the Tompkinsville Compressor Station equipment under interim or full power load exceeds a day-night sound level of 55 decibels on the A-weighted scale at noise sensitive area #1 or exceeds the predicted noise level at noise sensitive area #2, Texas Eastern shall:

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