

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

East Tennessee Natural Gas, LLC

Docket No. CP05-413-000

ORDER ISSUING CERTIFICATE

(Issued February 8, 2006)

1. On September 8, 2005, East Tennessee Natural Gas, LLC (East Tennessee) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity authorizing East Tennessee to construct and operate the Jewell Ridge Lateral, a 32-mile, 20-inch diameter pipeline in Tazewell and Smyth Counties, Virginia. East Tennessee also requests approval of its proposed initial incremental recourse rates and pro forma tariff sheets implementing new services provided by the proposed facilities. As set forth below, we will issue East Tennessee a certificate, subject to conditions.

**Background and Proposal**

2. East Tennessee is a natural gas company engaged in the transportation of natural gas through a pipeline system extending from central Tennessee through Virginia to North Carolina and south to Georgia. East Tennessee proposes here to construct a new lateral pipeline that will connect CNX Gas Company LLC's (CNX Gas) existing Cardinal States Gathering System in Tazewell County, Virginia, to East Tennessee's system in Smyth County, Virginia.<sup>1</sup>

3. Specifically, East Tennessee proposes to construct 32 miles of 20-inch diameter pipeline and appurtenant facilities in Tazewell and Smyth Counties, Virginia. In addition, East Tennessee will install two taps to allow for future load growth in accord with local communities' goals of increasing incentives for industry and economic growth in the region.<sup>2</sup> East Tennessee states that the capacity of the Jewell Ridge Lateral will be 235,000 Dth per day.

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<sup>1</sup> CNX Gas is a subsidiary of CONSOL Energy Inc.

<sup>2</sup> Access to future gas supplies through the taps will thus be made available, although no facilities are proposed here for such purposes as part of the Jewell Ridge Lateral project.

4. CNX Gas has signed a precedent agreement for 210,000 Dth per day of firm transportation capacity for a primary term of 15 years at a fixed negotiated rate of \$3.1141 per Dth monthly reservation charge. Paragraph 25 of the precedent agreement provides CNX Gas the option of reducing its firm transportation quantity by up to 50 percent of new firm transportation capacity requested by third party shippers (other than through capacity release) provided that the total reduction may not exceed 25,000 Dth per day during the term of the agreement. In addition, Paragraph 4 of the agreement requires CNX Gas to execute an agreement for 80,000 Dth per day of firm transportation service on East Tennessee's Patriot expansion project facilities with a receipt point at the interconnection of the Jewell Ridge Lateral and a delivery point on the facilities of Transcontinental Gas Pipe Line Corporation (Transco) in Rockingham County, North Carolina.<sup>3</sup> Finally, Paragraph 22 of the agreement provides that, at the end of the primary term, CNX Gas, or its affiliate, has the option to purchase the Jewell Ridge Lateral project at the net book value plus the amount of \$6,137,915.

5. The cost of the Jewell Ridge Lateral facilities is estimated to be approximately \$53 million. East Tennessee proposes new Rate Schedules FT-L and IT-L for service on the Jewell Ridge Lateral. The proposed initial recourse rate for firm service is an incremental reservation rate of \$4.8950 per Dth plus fuel and loss of 0.15 percent based on CNX Gas' contract demand of 210,000 Dth per day. East Tennessee proposes a 90/10 annual crediting to recourse rate and negotiated rate FT-L shippers of net revenues received for service under Rate Schedule IT-L, although East Tennessee states that it may agree to an increased allocation of IT-L revenues to negotiated shippers which would be reflected in applicable negotiated rate service agreements.

6. East Tennessee states that the proposed Jewell Ridge Lateral will allow CNX Gas to move its gas from its own production fields into new markets in the Southeast, thereby supporting CNX Gas' development efforts.<sup>4</sup> In addition to transporting new production, the proposed facilities will provide CNX Gas, as well as other producers, with an alternative outlet for existing gas supplies when existing transportation arrangements are disrupted. East Tennessee contends that the proposed project will provide markets attached to East Tennessee's system with direct access to competitively-priced, clean-burning natural gas to serve growing demand in the region, and provide its existing customers the benefits of additional system reliability, flexibility, and new supply options. In addition, East Tennessee argues that the increased capacity to transport supplies from the Appalachian basin will facilitate the development of incremental

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<sup>3</sup> On November 20, 2002, the Commission issued a certificate authorizing the construction of the Patriot project. *See* 101 FERC ¶ 61,188 (2002).

<sup>4</sup> In Volume 1B, Resource Report 1.1.1 of its application, East Tennessee states that the existing system for transporting CNX Gas' supplies to market is physically constrained during certain periods of the year and is operating at capacity.

supplies by enabling producers in southern Virginia to advance their drilling programs. Further, East Tennessee states that, in certain areas, such as the towns of Richlands and Cedar Bluff, Virginia, the Jewell Ridge Lateral will provide access to natural gas for the first time.

### **Interventions and Comments**

7. Notice of East Tennessee's application was published in the *Federal Register* on September 28, 2005 (70 *Fed. Reg.* 56,653). Atmos Energy Corporation, Public Service Company of North Carolina, Inc., East Tennessee Group, and CNX Gas filed timely, unopposed motions to intervene.<sup>5</sup> Sequent Energy Management, L.P. (Sequent Energy) requested late intervention.<sup>6</sup> There are no protests.

8. The East Tennessee Group, an ad hoc association representing the majority of East Tennessee's customers, comments that providing access to new natural gas supplies from the Appalachian Basin and thus providing additional system reliability, flexibility, and diversification of supply options are important benefits that would be of great value to members of the East Tennessee Group. Sequent Energy, a customer of East Tennessee, comments in support that creating additional outlet capacity in the Appalachian Basin will enhance drilling activity, thus providing additional gas supply to growing markets in the Southeast, Northeast and Mid-Atlantic regions.

9. CNX Gas comments in support that, after evaluating existing pipelines and finding that they are fully subscribed and do not adequately provide for production growth, CNX Gas has determined that construction of the Jewell Ridge Lateral is the quickest and most economic solution to bringing incremental production to market. CNX Gas also states that it has experienced interruptions on the Columbia Gas Transmission Corporation (Columbia) line that transports all of CNX Gas' Virginia production.<sup>7</sup> CNX Gas explains that the interruptions arise from capacity constraints on Columbia's system due to the growth of production in the Appalachian Basin, the expansion of the Cove Point Liquefied Natural Gas facility, and summer maintenance. The Jewell Ridge Lateral, states CNX Gas, will provide an alternate transportation route, including utilization of capacity on East Tennessee's recently constructed Patriot expansion project to deliver gas

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<sup>5</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2005).

<sup>6</sup> Sequent Energy has shown an interest in this proceeding and its participation will not delay the proceeding nor prejudice the rights of any other party. Accordingly, for good cause shown, we will grant Sequent Energy's motion for intervention in accord with Rule 214 (d). *See* 18 C.F.R. § 385.214 (d) (2005).

<sup>7</sup> CNX Gas states that it has purchased firm transportation on Columbia's line for a term extending through April 2015.

into Transco's system, to allow CNX Gas's production to reach markets in the Southeast, Mid-Atlantic, and Northeast regions. Finally, CNX Gas states that it intends to aggressively develop its acreage position and increase gas production in southwestern Virginia where it primarily produces coal bed methane. CNX Gas contends that capturing such gas is environmentally superior to the historical alternatives of flaring or venting the gas for mining safety reasons.

10. Other persons, including businesses and elected officials, commented in support of the project's beneficial effect on economic development, including access to gas for the first time to certain communities along the route. An Appalachian Basin producer, Penn Virginia Oil and Gas Corporation (Penn Virginia), states that, while it does not have production in close proximity to the proposed project, it supports the project because, by allowing exchange and re-direction of flows, the project will benefit even producers not under direct contract, many of whom experience curtailment during maintenance on existing pipelines. Penn Virginia concludes that pipelines providing transportation out of the region are currently at capacity, and that the incremental capacity of the proposed project will enhance drilling opportunities.

### **Discussion**

11. Since the application pertains to facilities used for the transportation of natural gas in interstate commerce, East Tennessee's proposal is subject to the Commission's jurisdiction and the requirements of subsections (c) and (e) of section 7 of the NGA.

#### **A. Application of the Certificate Policy Statement**

12. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating major new construction.<sup>8</sup> The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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<sup>8</sup>*Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC ¶ 61,277 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

13. 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.

14. The Commission also considers potential impacts of the proposed project on other pipelines in the market and on those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. 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.

15. East Tennessee's proposal to charge an incremental rate for service on the proposed facilities meets the threshold requirement of the Certificate Policy Statement that existing shippers not subsidize the expansion facilities. Cost recovery for the proposed project will not involve financial support from existing customers. No objections were received from any East Tennessee existing customers or groups thereof claiming that any subsidization or other degradation of service would occur. The record includes no evidence indicating such concerns. Thus, the evidence shows satisfaction of the threshold requirement of the Certificate Policy Statement.

16. The project will require permanent easement for approximately 183 acres, a small portion of which (approximately nine acres) East Tennessee believes may have to be obtained through the exercise of eminent domain. However, there are very significant benefits of the project. The proposed Jewell Ridge Lateral will provide much needed incremental capacity to transport increasing, new gas production, as well as existing production volumes during periods of curtailment on existing take-away pipelines, from the southwestern Virginia region of the Appalachian Basin. In order to enable it to pursue plans to expand gas production, CNX Gas has executed a precedent agreement for 210,000 Dth per day of firm transportation service on the proposed lateral. Direct access to this supply will provide East Tennessee's customers the benefits of additional system reliability, flexibility, and new supply options. In addition, the proposed project will give certain communities located along the project route the opportunity to obtain natural gas service for the first time. On balance, the benefits of East Tennessee's Jewell Ridge Lateral project outweigh any potential adverse impacts. Therefore, we find the proposal consistent with the Certificate Policy Statement and required by the public convenience and necessity.

17. Engineering analysis of East Tennessee's proposal indicates that its facilities are appropriately designed for the proposed services. The proposed 20-inch, 32-mile Jewel Ridge Lateral will provide 235,000 Dth per day of firm transportation service.<sup>9</sup> Construction of a 16-inch line could meet initial contractual requirements, but would result in a cost savings of only \$4 million. Further, CNX requested installation of a 20-inch line instead of a 16-inch line in order to: (1) avoid the high supply pressure requirements that would be necessary at all times on a 16-inch line, and (2) preserve incremental supply growth flexibility and existing supply outlet flexibility. Although East Tennessee states that it has no immediate plans to expand its mainline, a 20-inch line will allow East Tennessee to maintain service on the Jewel Ridge Lateral if there is any future expansion that increases the mainline operating pressure. In such a circumstance, a 16-inch line would not be able to maintain deliveries of CNX's contractual volumes without construction of additional facilities such as looping and compression. Thus, we find that construction of a 20-inch line is preferable to construction of a 16-inch line, because it meets the operational preferences of CNX Gas, the difference in cost is small and will not affect East Tennessee's existing ratepayers, and construction of a 20-inch line will avoid potential future adverse impacts in a sensitive environmental area.

#### **B. Rates and Tariff Issues**

18. East Tennessee proposes new open access Part 284 transportation service under Rate Schedules FT-L and IT-L that will be available to any party requesting firm or interruptible transportation service pursuant to section 5 of East Tennessee's General Terms and Conditions (GT&C) on that portion of East Tennessee's system designated as the Jewel Ridge Lateral.<sup>10</sup> The proposed firm transportation service under Rate Schedule FT-L will be provided as a "lateral line only" service, restricted to the lateral with no secondary transportation or capacity release rights or otherwise, other than on the designated lateral. Interruptible transportation service will be provided on the designated lateral under Rate Schedule IT-L. The FT-L and IT-L shippers will have the option of (i) acquiring firm transportation capacity on the East Tennessee mainline pursuant to a separate contract for unsubscribed mainline capacity or via capacity release from East Tennessee's existing firm shippers, (ii) selling gas to parties holding capacity rights on the East Tennessee mainline, or (iii) transporting on an interruptible basis in order to deliver gas supplies from the lateral.

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<sup>9</sup> See East Tennessee's data response filed December 22, 2005. In its Data Response No. 1, East Tennessee states that, if capacity levels higher than its requested certification level of 235,000 Dth per day become operationally feasible on the Jewel Ridge Lateral, East Tennessee will obtain the appropriate authorization for such additional capacity.

<sup>10</sup> See Attachment B for a list of the pro forma tariff sheets.

### **Proposed Rates**

19. East Tennessee develops cost-based incremental recourse rates for its lateral line services based on a straight fixed variable rate design. The proposed cost-based Rate Schedule FT-L reservation rate of \$4.8950 per Dth is derived using the \$12,334,406 annual cost of service and the annual reservation design determinants of 2,520,000 Dth (210,000 Dth per day times 12). The commodity rate is \$0.00 per Dth since there are no identifiable variable costs associated with the lateral pipeline. The proposed cost-based Rate Schedule IT-L commodity rate of \$0.1609 per Dth is derived at 100 percent load factor of the FT-L rates, as is the authorized overrun rate. East Tennessee has not identified any commodity determinants associated with its proposed IT-L service and does not propose to allocate costs to its IT-L service. East Tennessee proposes a fuel and loss retention percentage of 0.15 percent (rounded to 0.2 percent), which is comprised entirely of the gas lost and unaccounted for factor. There is no compression on the Jewell Ridge Lateral, and therefore no fuel component.

20. East Tennessee proposes to design its initial firm incremental cost-based rates using the 210,000 Dth per day because it intends to enter into a firm service agreement for up to 210,000 Dth per day with its sole anchor shipper, CNX Gas, for a primary term of 15 years.<sup>11</sup> East Tennessee states that it is using the 210,000 Dth per day of capacity, instead of the pipeline's design capacity of 235,000 Dth per day because it is unable to ascertain the level of firm transportation capacity under contract for the next 15 years beyond the 210,000 Dth per day capacity.

21. East Tennessee states that the 235,000 Dth per day capacity was based on a project design using a 20-inch pipeline, in lieu of using a 16-inch pipeline that would have met its contractual requirement with CNX Gas. East Tennessee states that using the 20-inch pipeline accommodates CNX Gas' current transportation demand, anticipated growth and need for market flexibility and minimizes impacts to the local environment. East Tennessee asserts that installing a 16-inch pipeline at approximately \$49,136,000 instead of a 20-inch pipeline estimated at \$53,136,000 would result in cost savings of only \$4 million.

22. Additionally, East Tennessee states that CNX Gas does not currently have sufficient compression capability upstream of the Jewell Ridge Lateral to deliver 210,000 Dth per day. East Tennessee explains that CNX Gas can currently deliver up to 80,000 Dth per day and will be able, after it installs compression, to deliver up to 100,000 Dth

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<sup>11</sup> East Tennessee has entered into a precedent agreement with CNX Gas dated July 29, 2005, contemplating firm service under Rate Schedule FT-L for a negotiated rate which is fixed at \$3.1141 per Dth (Exhibit I of the Application).

per day when the Jewell River Lateral goes into service. East Tennessee states that CNX Gas will not be able to deliver the expected maximum daily transportation quantity (MDTQ) of 210,000 Dth per day until it installs further additional compression.

### **Commission Determination**

23. East Tennessee's proposed cost of service, initial incremental recourse rates, and the new pipeline lateral services are approved, subject to certain modifications and conditions discussed below. If East Tennessee desires to make any other changes not specifically authorized by this order or a subsequent order prior to placing its facilities into service, it will need to file an amendment to its application under NGA section 7(c). In that filing East Tennessee must provide cost data and required exhibits supporting any revised rates. After placing the facility in service, East Tennessee must make an NGA section 4 filing to change its rates to reflect any revised construction costs and operating costs.

#### **1. Rate Determinants**

24. The Commission's general policy is to require a pipeline to base its rates on actual capacity.<sup>12</sup> However, rather than designing its FT-L rates on the 235,000 Dth per day of design capacity, East Tennessee proposes rates based on 210,000 Dth per day of capacity instead. East Tennessee has provided a reasonable explanation for designing the project using a larger 20-inch pipeline resulting in 235,000 Dth per day capacity instead of using a 16-inch pipeline, and we accept that it may be some time before CNX Gas can achieve the 210,000 Dth per day capacity level that East Tennessee proposes to use in designing its cost-based recourse rates. Nevertheless, East Tennessee has entered into a precedent agreement with CNX Gas for a primary term of 15 years at a negotiated rate and East Tennessee may be able to market the excess capacity during that period.

25. The Commission finds these circumstances are similar to those in *PGT* and warrant a departure from its general policy of requiring a pipeline to base its rates on actual capacity. In *PGT*, the Commission found that constructing a 12-inch pipeline rather than a 10-inch pipeline was preferable because additional market on the lateral was likely, the cost difference was small, and no further environmental disturbance would be required. In that order, the Commission presented *PGT* with two alternative rate options and *PGT* was required to inform the Commission which option it chose when it accepted the certificate. We will take a similar approach here. East Tennessee must choose from two options. In Option 1, East Tennessee's initial rates will be based on the contract volumes of 210,000 Dth per day for the first two years of operations after which the initial rates

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<sup>12</sup> See *Pacific Gas Transmission Co. (PGT)*, 70 FERC ¶ 61,016 at 61,045, *aff'd*, 71 FERC ¶61,268 (1995).

would be based on the design capacity of 235,000 Dth per day. Alternatively, in Option 2, East Tennessee's initial rates will be based on the pipeline's design capacity of 235,000 Dth per day. East Tennessee must inform the Commission which option it chooses for its lateral when it accepts the certificate.

## **2. Capacity Turnback Rights**

26. Paragraph 25 of the precedent agreement between East Tennessee and CNX Gas provides that: “[c]ustomer shall have the right but not the obligation, to turn back a portion of its MDTQ under this Precedent Agreement and its FT-L Service Agreement by up to 50% of the new firm capacity acquired by 3<sup>rd</sup> party shippers (other than through capacity release) on the Project Facilities under Rate Schedule FT-L. Customer's total reduction of MDTQ may not exceed 25,000 Dth during the term of this Precedent Agreement and Customer's FT-L Agreement.” East Tennessee characterizes this provision as a “reverse open season” in a data response,<sup>13</sup> but the precedent agreement makes no mention of a reverse open-season process, nor does it explain why the reverse open season should continue for the term of the FT-L service agreement. Paragraph 11 of the precedent agreement also provides that Paragraph 25 shall survive the termination of the Precedent Agreement for so long as the FT-L Service Agreement remains in effect unless otherwise specified herein.

27. The precedent agreement with CNX Gas is for a negotiated rate transaction, and the Commission has declined to examine negotiated rates in the context of its review of the merits of a certificate application.<sup>14</sup> However, East Tennessee notes that it intends to enter into a firm service agreement with CNX Gas containing the capacity turnback rights. The capacity turnback rights might constitute an impermissible negotiated term and condition of service under section 49 of the GT&C of East Tennessee's tariff. Moreover, East Tennessee's pro forma Firm Lateral Transportation Agreement does not specifically provide for turnback rights available to all FT-L shippers. When East Tennessee files to implement its negotiated rate with CNX Gas it must explain why the capacity turnback provision is not unduly discriminatory and does not constitute an impermissible negotiated term and condition of service.

## **3. Fuel and Loss Retention Percentage**

28. East Tennessee proposes a fuel and loss retention percentage for Rate Schedule FT-L and IT-L services of 0.15 percent, but rounded the percentage to 0.2 percent on its rate sheet, Pro Forma Sheet No. 21A. However, consistent with the fuel and loss

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<sup>13</sup> See East Tennessee's December 22, 2005 response to Staff's Information Request No. 5.

<sup>14</sup> *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360 (2000).

retention percentages for the transportation rate schedules in East Tennessee's FERC Gas Tariff, Third Revised Volume No. 1, we will require East Tennessee to revise its tariff sheet to use the same number of decimal places, and therefore, reflect a 0.15 percent fuel and loss retention percentage.

#### **4. Negotiated Rates**

29. East Tennessee states on pages 16 and 17 of its Application that it proposes to file either a negotiated rate service agreement or numbered tariff sheet prior to the commencement of service. However, section 49.6 of the GT&C of its currently effective tariff requires East Tennessee to file a tariff sheet for negotiated rate transactions. Therefore, East Tennessee is required to file a tariff sheet in accordance with section 49.6 of the GT&C of its tariff and comply with section 154.1 and section 154.112(b) of the Commission's regulations.<sup>15</sup>

#### **5. Interruptible Services Revenue Crediting**

30. East Tennessee does not propose to allocate any costs to interruptible services in designing its rates. Instead, section 4.4 of Rate Schedule IT-L provides for crediting 90 percent of the net revenues received from interruptible services to all firm shippers under Rate Schedule FT-L. East Tennessee states that it may agree to a further sharing of credits allocated to negotiated rate shippers.

31. Our policy for new interruptible services requires a 100 percent credit of interruptible revenues, net of variable costs, to firm and interruptible shippers or an allocation of costs and volumes to these services.<sup>16</sup> Instead of allocating costs to interruptible services, East Tennessee proposes to credit 90 percent of revenues from interruptible services to firm shippers. Since East Tennessee has chosen to use a revenue crediting mechanism, we will require East Tennessee to revise its tariff to provide a mechanism to credit 100 percent of all interruptible services revenues, net of variable costs, to its firm and interruptible shippers.

#### **C. Environment**

32. On January 31, 2005, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Jewell Ridge Pipeline Project and Request for Comments on Environmental Issues (NOI). We received 38 comment letters; 19 from individuals and/or groups, and 19 from federal, state, and local agencies. Our staff addressed all substantive comments in the environmental assessment (EA). The EA

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<sup>15</sup> 18 C.F.R. §§ 154.1 and 154.112(b) (2005).

<sup>16</sup> See, e.g., *Tractebel Calypso Pipeline, LLC*, 106 FERC ¶ 61,273 at P 11 (2004).

addresses geology, soils, water resources, fisheries, wetlands, vegetation, wildlife, endangered and threatened species, land use, cultural resources, air and noise quality, reliability and safety, and alternatives.

33. The EA was issued on December 13, 2005 with a 30 day comment period. The EA was mailed to federal, state, and local agencies, elected officials, Native American tribes, newspapers, public libraries, interveners to the Commission proceeding, and other interested parties (*i.e.*, landowners, other individuals, and environmental groups who provided scoping comments). We received six comment letters on the EA from the U.S. Fish and Wildlife Service (FWS), East Tennessee Natural Gas, L.L.C. (East Tennessee), the Virginia Department of Environmental Quality (VDEQ), Mr. Scott Damon and Ms. Maureen Wallin, Ms. Doris J. Pruett and Ms. Teresa Pruett. The following paragraphs address these comments. In addition, we have modified some of the environmental conditions in response to these comments (*see* Appendix A to this order).

34. The FWS served as a cooperating agency in our review of the project and filed comments on the EA on January 20, 2006. The FWS states that it could not support a finding of “no significant impact” until the Commission analyzes in the EA the potential effects of future secondary development the FWS believes will be encouraged by the proposed pipeline and associated taps.

35. The EA addresses the potential for future secondary development as a result of the proposed project in section 1.3.5, section 1.7, section 2.1.1.1, and section 2.4.2.2. The EA does not analyze the effects of future secondary development because no extraction, transport, or local service infrastructure facilities are currently planned to connect to the Jewell Ridge Lateral. The Commission will not speculate on the impacts of potential future projects with no certain timeframes, design parameters, identified locations, or proponents.

36. The Commission is aware of the imperiled nature of the tan riffleshell population and acknowledges that future development projects in the watershed could impact the species. No taps are proposed in the Indian Creek watershed, and there are no current plans for future interconnects or supply laterals. The EA describes specific measures to mitigate the impact of pipeline construction in this area. In addition, East Tennessee has proposed to sponsor a water quality monitoring station in the Indian Creek watershed that we believe may provide an overall beneficial effect to endangered mussels in the project area.

37. Any future action on a jurisdictional pipeline would be subject to compliance with the Endangered Species Act (ESA). Furthermore, no project may be performed under a Part 157 blanket certificate if it may affect a threatened or endangered species (*see* 18 CFR §157.206 (b)(2)(vi); §157.206 (b)(3)(i), and Appendix I of §157). Intrastate natural gas transmission or distribution pipelines, and any related facilities, are regulated in

Virginia by the State Corporation Commission (SCC) and receive environmental review in accordance with Virginia Code, Title 56, Chapter 10.1, prior to any approval by the SCC. Such reviews are coordinated by the VDEQ.

38. To ensure compliance with the ESA and further our discussions and coordination with the FWS, we have requested formal consultation under section 7 of the ESA. We have included a condition in the order that requires completion of formal consultation prior to construction (see Environmental Condition No. 20). We believe this condition will ensure there will be limited adverse impacts to threatened and endangered resources as a result of project construction and operation.

39. East Tennessee filed comments on our EA on January 17, 2006, including responses to four of our recommendations. We recommended in the EA that East Tennessee develop and implement an environmental complaint resolution procedure, including provision of a local contact that landowners should call first with their concerns before contacting an East Tennessee Hotline. East Tennessee states that it prefers landowners to contact its Hotline as a first measure to ensure all calls are logged appropriately before the information is communicated to the appropriate right-of-way manager. We believe this to be an adequate procedure to appropriately address landowner complaints and have revised Environmental Condition No. 7 in this order to reflect this protocol.

40. We recommended in the EA that East Tennessee incorporate a bored crossing of UT Indian Creek 2 at MP 8.76 with the road bore of State Route 631/Indian Creek Road (see Recommendation No. 18 in section 4.0 of the EA). In its comments on the EA, East Tennessee provided an evaluation of elevation changes, workspace requirements, and slopes at the construction area that it believes make it infeasible to incorporate the tributary into the road bore. We reviewed East Tennessee's evaluation, associated data, and photo documentation of the site, and agree that the recommended bore of UT Indian Creek 2 is not practical due to the excessive excavation requirements. Therefore, we have not included the recommendation as an environmental condition in this order.

41. We recommended in the EA that East Tennessee reduce workspace requirements at the crossing of the North Fork Holston River and Little River. In its comments on the EA, East Tennessee notes that it has reduced additional temporary workspaces at the North Fork Holston River crossing and will provide revised detailed survey alignment sheets prior to construction. We note East Tennessee's progress in complying with this recommendation, but due to outstanding filing and review requirements, we will include the corresponding condition in this order (*see* Environmental Condition No. 16).

42. We recommended in the EA that East Tennessee fund and hire a third-party compliance inspection contractor, including the employment of a full-time compliance manager to direct and coordinate the monitors and reporting system, and provide

technical support to Commission staff. East Tennessee stated that it intends to comply with the recommendation, but requested that the language be clarified to reflect the employment of a compliance manager “as needed to meet the objectives of the monitoring program.” East Tennessee anticipates that all construction would proceed in one spread, requiring only one compliance inspection monitor. Based on the relatively short construction period and number of monitors to coordinate, we believe this clarification is appropriate. We have revised Environmental Condition No. 22 in this order to reflect this clarification.

43. The VDEQ served as a cooperating agency in our review of the project and filed comments on the EA on January 18, 2006. The VDEQ’s comments represent a compilation of comments from ten Virginia state resource agencies and divisions, including the VDEQ, Department of Health, Department of Transportation (VDOT), Marine Resources Commission, Department of Historic Resources (DHR), Department of Game and Inland Fisheries (VDGIF), Department of Mines, Minerals, and Energy, Department of Conservation and Recreation (VDCR), Department of Forestry, and the Cumberland Plateau Planning District Commission. We note that Commission staff performed extensive coordination with the state throughout our pre-filing review of the project, including interagency meetings, site visits, and review of the draft EA.

44. The VDEQ noted that East Tennessee is required to comply with various state statutes and regulations including erosion and sediment control laws and regulations, stormwater management regulations, air quality regulations, water protection permits, and solid and hazardous waste regulations. The Commission encourages cooperation between interstate pipelines and local authorities. Our EA addresses the status of required state permits and approvals in section 1.8 and notes that construction contractors employed by East Tennessee would be required to observe and comply with all applicable state and local laws, ordinances, and regulations.

45. The Virginia Department of Health – Office of Drinking Water recommended that the Claypool Hill and Richlands Water Treatment Plants be notified prior to the start of construction of the Little River crossing. Environmental Condition No. 18 has been modified to require East Tennessee to provide the recommended notifications.

46. The Virginia Marine Resources Commission commented that time-of-year restrictions for instream work would be necessary to protect freshwater mussels and certain trout species. Environmental Condition No. 18 of this order addresses this issue by requiring East Tennessee to consult with the FWS and VDGIF to develop a schedule for pipeline crossings of streams identified as requiring time-of-year restrictions.

47. The VDCR’s Division of Planning and Recreation Resources commented that project construction across the Clinch River may impact recreational activity and noted that downstream segments of that river are designated as State Scenic Rivers. In

addition, the VDCR commented that the North Fork Holston River and Little River may potentially be designated as State Scenic Rivers in the future, although we note that they are not currently designated as such.

48. To minimize impacts to these waterbodies, the VDCR recommended that construction occur during low flow periods, that recreational boaters be directed to safe passage around the construction area, and that project construction should be sensitive to the scenic value of the rivers.

49. Construction across these waterbodies will occur based on a schedule developed in consultation with the FWS and VDGIF to ensure the protection of listed threatened and endangered species (see Environmental Condition No. 18 in this order). Our EA also includes East Tennessee's site specific construction and restoration plans for each of these rivers, and describes measures East Tennessee would use to minimize construction impacts and restore streambeds, banks, and riparian areas. We believe these measures would minimize impacts to the scenic qualities of the rivers. To address the VDCR's recreational boating concerns, we have included Environmental Condition No. 23 which requires East Tennessee to consult with the VDCR Division of Planning and Recreation Resources to develop a plan to alert and redirect recreational boaters from construction areas.

50. The VDCR Division of Planning and Recreation also commented that the pipeline would cross Virginia Route 19, a designated Scenic Byway. VDCR recommended that an angular corridor cut (as opposed to a perpendicular "long view" cut) be made in order to reduce the visual impact of construction. We have reviewed aerial and ground photography of the crossing location and determined that the pipeline would cross Virginia Route 19 adjacent to a gas station in southwest Pounding Mill, in an area largely denuded of mature tree growth. Therefore, since minimal visual impacts to the designated Scenic Byway will result, we will not require the use of an angular corridor cut.

51. The VDCR Division of Natural Heritage reiterated comments in its previous letters to the Commission which were addressed in the EA. In addition, the VDCR requested copies of the survey reports for threatened and endangered species. All survey reports were provided to the VDCR in Appendix D of the Biological Assessment (BA) prepared for this project.

52. The VDCR Division of Natural Heritage recommended coordination with the FWS and VDGIF to ensure compliance with protected species legislation with regard to the Virginia big-eared bat and rare mussels documented in Little River, Laurel Creek, North Fork Holston River, and Indian Creek. The EA describes coordination that has been ongoing between the Commission, East Tennessee, the FWS, and the VDGIF since December of 2004, and future coordination proposed by East Tennessee to refine mussel

relocation and mitigation plans. In addition, we have included several environmental conditions to address any outstanding issues requiring further consultation with these agencies prior to construction, including completion of formal consultation with the FWS under section 7 of the ESA (*see* Environmental Condition Nos. 18, 19, and 20). The VDCR also reiterated a previously provided recommendation to avoid construction across Indian Creek. Avoidance of Indian Creek was evaluated in the alternatives analysis provided in sections 3.3 and 3.5 of the EA. We concluded that there is no feasible route alternative to avoid Indian Creek.

53. The VDCR recommended surveys for rare plant species (purple spurge, fringed scorpion-weed, crested sedge and appalachian bugbane) in suitable habitats, if proposed access roads, staging areas, and contractor yards were not included in initial surveys. We note that none of the rare plants are protected by any federal or state laws or regulations. We also note that approximately 97 percent of all access roads are existing and previously disturbed, and all contractor yards and staging areas are located in previously disturbed and cleared industrial/commercial areas. All disturbance areas including new or modified access roads, staging areas, and contractor yards were included in East Tennessee's environmental surveys. Based on the disturbed nature of these areas, we do not believe rare plant inventories are necessary. The VDCR also recommended that stream crossings be inventoried for rare mussels, fish, and other aquatic resources. All areas providing suitable habitat for federal and state listed species were surveyed in accordance with recommendations previously provided by the FWS and VDGIF.

54. The VDCR commented that it concurs with the VDGIF's recommendations to develop and implement an invasive species control plan for the proposed pipeline, including a monitoring protocol. Invasive species control is addressed in section 2.3.1 of the EA. East Tennessee has stated it would identify specific locations of invasive plant species that occur along the right-of-way during pre-construction surveys to establish a baseline and would handle invasive species in a manner during clearing operations to minimize spread of seeds. We have included Environmental Condition No. 12, requiring East Tennessee to revise its Erosion and Sediment Control Plan (E&SCP) to include vegetation monitoring of the construction work areas for at least two growing seasons to determine the success of revegetation. Vegetation monitoring would identify noxious weed infestations or unsatisfactory revegetation efforts that require remedial action. We believe these measures address the VDCR's concerns with regard to invasive species.

55. The VDCR also stated its support for the use of strict erosion and sediment control measures for all stream crossings and time-of-year restrictions proposed by the FWS and VDGIF. Erosion and sediment control measures for stream crossings are described in section 2.2.2.1 of the EA and in East Tennessee's E&SCP. We believe these measures are appropriate to ensure sedimentation impacts are minimized at stream crossings and commensurate with the level of resource protection necessitated by the habitats and species present. We recognize that additional coordination is required with the FWS and

VDGIF to identify the appropriate time-of-year restrictions for waterbody crossings. Therefore, we have included Environmental Condition No. 18, requiring East Tennessee to consult with these agencies to develop a schedule for the pipeline crossings of waterbodies identified as requiring time-of-year restrictions.

56. The VDCR recommends continued coordination with the Virginia Karst Protection Coordinator to avoid, minimize, or mitigate impacts to karst features. Environmental Condition No. 13 requires East Tennessee to complete geophysical surveys to identify karst features and develop avoidance, preventive, or mitigative measures. We have revised the condition to ensure that VDCR also receives this information and has an opportunity to comment on East Tennessee's proposed plans. In addition, Environmental Condition No. 14 requires future coordination with the VDCR to identify hydrostatic test water discharge locations and methods to avoid sinkhole development. These conditions will ensure continuance of the recommended coordination.

57. Lastly, the VDCR Division of Natural Heritage states that the proposed project will not affect any documented state listed plants or insects, or State Natural Area Preserves under VDCR's jurisdiction in the project vicinity.

58. The VDGIF provided several recommendations with regard to right-of-way maintenance. The VDGIF recommended that maintenance not occur between April 15 and August 1 to avoid the breeding season for most birds. This recommendation is consistent with East Tennessee's right-of-way maintenance procedures described in section 8.2.1 of its E&SCP. The VDGIF recommended that the right-of-way be maintained as a shrub community with grass height at least 7-10 inches high. Section 8.2.1 of East Tennessee's E&SCP stipulates that routine vegetation maintenance clearing shall be conducted no more frequently than once every three years. This would likely result in temporary development of some shrub cover, consistent with the VDGIF recommendations. However, to facilitate periodic corrosion and leak surveys, a 10-foot-wide corridor centered on the pipeline may be maintained annually in an herbaceous state.

59. The VDGIF recommends that mowing occur in the early spring rather than late summer/fall to provide winter cover for wildlife. As stated above, no clearing would occur between April 15 and August 1 of any year. We will not restrict clearing activities beyond those dates. Given the availability of habitats and cover in the project vicinity, the pipeline right-of-way will not be a significant source of winter cover for resident wildlife. In addition, East Tennessee must be permitted to effectively clear its right-of-way to allow access for routine pipeline patrols, access in the event of emergency repairs, and maintain visibility to prevent third-party incidents and allow for aerial patrols.

60. The VDGIF recommends that the maintained portion of the permanent right-of-way be reduced from 50-foot-wide to 30-foot-wide within the Indian Creek, Clinch River,

North Fork Holston River, and Little River watersheds. This measure would allow additional reestablishment of mature vegetation and tree growth along the construction right-of-way. We believe this recommendation is a reasonable mitigation measure in consideration of the identified resource protection needs in these watersheds. Therefore, we have included Environmental Condition No. 24 to address this recommendation.

61. The VDGIF recommends that buffer strips adjacent to perennial and intermittent waterbodies in the Indian Creek, Clinch River, North Fork Holston River, and Little River watersheds should be at least 100 feet and 50 feet wide, respectively, although VDGIF would prefer buffers of 200 feet and 100 feet. VDGIF noted that at least 50 feet is needed to provide significant riparian buffer function. According to section 8.2.2 of its E&SCP, East Tennessee would maintain a buffer strip that measures 25 feet back from the mean high water mark. To address the VDGIF's recommendation to ensure significant function of these buffer strips, we have included Environmental Condition No. 25 requiring East Tennessee to increase the buffer width to 50 feet in the watersheds indicated above.

62. The VDGIF recommends that potential impacts from secondary development be assessed and that areas around each of the proposed taps be reviewed to determine the most likely areas for future pipeline construction. As stated above in response to FWS comments, the FERC will not speculate on the impacts of potential future projects with no known timeframes, design parameters, identified locations, or proponents.

63. The VDGIF recommends that East Tennessee's E&SCP include language requiring vegetation monitoring of construction work areas until vegetation is fully established, if full establishment has not occurred within the two growing seasons. Section 8.1 of East Tennessee's E&SCP requires revegetation efforts (such as fertilizing or reseeded) to continue until revegetation is successful. Successful revegetation in upland areas is defined when vegetation has a uniform 70 percent vegetative coverage. Wetland revegetation will be considered successful when the cover of herbaceous and/or woody species is at least 80 percent of the type, density, and distribution of the vegetation in adjacent wetland areas that were not disturbed by construction. We believe these measures are adequate. The VDGIF also recommended that the term "growing season" be changed in the E&SCP to be more specific. We believe this language is sufficiently self explanatory.

64. The VDGIF recommends that no hydrostatic test water be discharged into any waterbody and that all discharges occur within the same watershed as the associated intake source. East Tennessee has agreed to both these recommendations, as stated in section 2.2.2.2 of the EA. The VDGIF also recommends that test water be discharged to temporary stormwater basins at locations determined through coordination with the VDCR. Environmental Condition No. 14 addresses this recommendation, by requiring East Tennessee to consult with the VDCR to identify hydrostatic test water discharge

locations and methods to avoid potential sinkhole development. A hydrostatic test water discharge plan, including VDCR comments on that plan, would be filed with the Commission for our review and approval.

65. The VDGIF requests further coordination regarding the need to blast in the Clinch, North Fork Holston, Little River, or Laurel Creek crossings. As stated in section 2.1.1.5 of the EA, East Tennessee has agreed to provide representatives of the VDGIF at least one week's notice if blasting is required to establish the trench across these waterbodies. If East Tennessee identifies a need for blasting, the VDGIF recommends further coordination regarding mussel relocations. As stated in section 2.4.2.2 of the EA, East Tennessee has agreed to perform all relocations in consultation with the FWS and VDGIF. Additionally, the VDGIF recommends that the guidelines required for blasting in karst and cave areas should be used at all waterbody crossings. East Tennessee is completing geophysical surveys to identify any karst features along the pipeline route (see Environmental Condition No. 13), including waterbody crossings. If karst features are identified, East Tennessee would follow the guidelines for blasting in karst areas as discussed in section 2.1.1.5 of the EA.

66. The VDGIF recommends that the temporary and permanent slope breakers that are used in proximity to roads also be utilized in proximity to all waterbodies, if more stringent. The requirements for installation of temporary slope breakers apply to slopes less than 50 feet from any waterbody, wetland, or road crossing (*see* section 3.5.4 of East Tennessee's E&SCP). Permanent interceptor dikes would be installed on slopes across the entire right-of-way at all waterbody and wetland crossings and at the base of slopes adjacent to roads (*see* section 3.6.1 of East Tennessee's E&SCP).

67. In the event that a washout affects a stream, the VDGIF requests notification to itself and the VDCR, and immediate implementation of corrective measures. As described in section 1.5.1 of the EA, East Tennessee will hire and fund a third-party compliance inspection monitor to work under the Commission's direction and report directly to Commission staff on a daily basis (*see* Environmental Condition No. 22). The third party monitor's report to the Commission would confirm that East Tennessee has implemented immediate corrective measures. The monitoring program would also be coordinated with reporting that may be required by other federal and state agencies. Therefore, the VDGIF's notification requirements will be incorporated into the Commission's third-party monitoring program.

68. The VDGIF recommends removing equipment bridges upon completion of the associated crossings, wherever instream supports are necessary. We addressed the VDGIF's previous recommendations regarding removal of equipment bridges in the EA. As stated in section 2.2.2.1 of the EA, East Tennessee's E&SCP describes the procedures East Tennessee would follow when using equipment bridges. We believe these procedures would minimize impacts to the waterbody. Removal of equipment bridges

immediately following the pipeline crossing could impede access to the right-of-way, increase right-of-way disturbance, and may slow stabilization, cleanup, restoration, and revegetation efforts. Therefore, we will not recommend immediate removal of equipment bridges.

69. The VDGIF supports the Commission's recommendation in the EA to incorporate a bored crossing of UT Indian Creek 2 with the adjacent road bore and reduce additional temporary workspaces at the Little and North Fork Holston Rivers. As stated above, we have determined that a bored crossing of UT Indian Creek 2 is not practical due to excessive excavation requirements and we have removed the recommendation from this Order.

70. The VDGIF recommended time-of-year restrictions for instream and understream construction in the Clinch River, Indian Creek, North Fork Holston River, Little River, Little Tumbling Creek, Laurel Creek, and UT Indian Creek 2. We recognize that further consultation is required to determine appropriate crossing time periods. Therefore, we have included Environmental Condition No. 18, requiring East Tennessee to consult with the FWS and VDGIF to develop a schedule for the pipeline crossings of Indian Creek, Clinch River, North Fork Holston River, Little River, and Laurel Creek. VDGIF only recently identified Little Tumbling Creek and UT Indian Creek 2 as waterbodies potentially requiring time-of-year restrictions. Therefore, we have revised Environmental Condition No. 18 to be inclusive of all waterbodies that may require time-of-year restrictions.

71. The VDGIF recommends that hydrostatic test water intake screens be equipped with the smallest possible mesh, and that the intakes be positioned perpendicular to the stream flow to minimize impingement and entrainment of fish. We addressed the VDGIF's previously stated recommendations regarding hydrostatic water uptake screens and uptake velocity in the EA. As stated in section 2.2.2.2 of the EA, the smallest possible mesh size East Tennessee could utilize is a one-half to one-quarter inch mesh screen. East Tennessee has stated that a smaller mesh size would cause pump malfunctions, and frequent intake clogs that could introduce air pockets into the pipeline which pose a safety hazard during testing. To ensure the VDGIF's additional concerns are addressed, we have included Environmental Condition No. 19, requiring East Tennessee to develop a plan for the withdrawal of hydrostatic test water from any state-designated Threatened and Endangered Species Water, including VDGIF's comments on that plan. We will review the hydrostatic test plan in consideration of VDGIF's recommendations, prior to final approval.

72. VDGIF recommends further coordination with staff regarding a proposed water quality monitoring station and any other mitigation projects resulting from this project. As stated in section 2.4.2.2 of the EA and section 4.2.5 of the BA, East Tennessee has agreed to continue to consult with the FWS and VDGIF to identify the most appropriate

mitigation measures to assist with the recovery of the tan riffleshell in Indian Creek and mitigate impacts to other listed mussel species in a manner commensurate with the level of potential effects on federally listed mussel species. Final mitigation plans will likely result from the formal section 7 consultation process that must be completed prior to construction (*see* Environmental Condition No. 20).

73. The VDGIF recommended updated mussel surveys on six streams (Walker Creek, Locust Cove Creek, Little River, Laurel Creek, North Fork Holston River, and Clinch River) to facilitate relocation of all species of mussels from the construction footprint. The VDGIF recommended that the surveys occur within 30 days prior to crossing or that East Tennessee should coordinate with VDGIF staff. As discussed in section 2.4.2.2 of the EA, all six of these streams were surveyed by qualified mussel biologists during the months of August and September 2005. Given the date of the surveys and the sedentary nature of mussel populations, we do not believe it is necessary to update these surveys. We note that although some common mussel species were identified in the survey reaches of Walker Creek, Locust Cove Creek, Little River, and Clinch River, no assemblages of mussels were identified in the areas that would be disturbed by construction and no federally or state listed species were identified. We acknowledge the possibility of limited mortality of individual common mussels at these crossing locations; however, impacts would be insignificant. Therefore, we will not require a mussel relocation program for these streams.

74. Mussel assemblages were identified within the crossing locations at Laurel Creek and the North Fork Holston Rivers. To avoid direct impacts on mussel species found at the crossing locations at Laurel Creek (including one federal species of concern) and the North Fork Holston River (including one federal species of concern and one candidate species), East Tennessee has proposed to employ qualified mussel biologists to identify and relocate all aggregations of mussels (both common and listed species) from within the instream 100-foot-wide construction work area to appropriate habitat upstream of the crossing. All relocations would be done in consultation with the FWS and VDGIF. These mitigation measures are reasonable and commensurate with the level of potential effects and status of mussel species identified in the surveys.

75. Finally, the VDGIF recommended that all fish be removed and safely relocated to suitable habitat within the same stream prior to dewatering a section of stream. The VDGIF recommended coordination with VDGIF staff to determine the streams from which to relocate fish. As stated in section 2.2.3 of the EA, the East Tennessee has proposed to monitor the isolation zone during the initial stages of all stream flow diversions and relocate any fish or other aquatic biota within the isolation zone to downstream habitat prior to any in-stream work. East Tennessee's proposed mitigation is consistent with the VDGIF's recommendation. Therefore, no further coordination with VDGIF is necessary with regard to fish relocation measures.

76. The Virginia Department of Historic Resources (DHR) served as a cooperating agency in our review of the project. The DHR State Historic Preservation Officer (SHPO) stated it had yet to receive additional information for the Phase II evaluation of archaeological site 44SM294, including artifact and excavation photographs. East Tennessee has submitted the revised Phase II report to the SHPO and filed the report with the Commission January 11, 2006. The EA noted that additional work was required at site 44SM294 and we have included Environmental Condition No. 21 to require the completion of all necessary reports and plans before any construction may occur.

77. The DHR SHPO commented that East Tennessee has not indicated whether it would avoid potentially significant portions of site 44TZ134 by choosing its proposed western alignment through the site. East Tennessee has indicated in a January 17, 2006 filing that it will use the western alignment at site 44TZ0134 and thus no additional work is required.

78. The DHR SHPO also commented that it was unable to concur with a “no adverse affect” finding regarding impacts to Maiden Spring Farm Historic District and the Cove Rural Historic District. The EA indicated that further data collection and consultation with the SHPO is required to identify any necessary cultural resource treatment plans or mitigation measures with regard to the Maiden Spring Historic District and Cove Rural Historic District. To address the SHPO’s concerns and ensure compliance with section 106 of the National Historic Preservation Act, we have included Environmental Condition No. 21 requiring East Tennessee to file any necessary treatment plans or mitigation measures for our review and approval prior to construction.

79. The VDEQ Waste Division expressed concern that East Tennessee had not conducted an extensive database search necessary to identify all solid waste facilities and potential Resource Conservation and Recovery Act (RCRA) hazardous waste generators or sites that may be intersected by the pipeline corridor. The VDEQ Waste Division provided references to all waste databases recommended for search. In a January 30, 2006 filing, East Tennessee detailed the hazardous materials database reviews that were conducted for the project by its contractors, Environmental Data Resources, Inc. (EDR). EDR conducted an extensive review of 43 federal and state databases, which are inclusive of those identified by the VDEQ, to identify any potential waste sites or generators within 0.25 mile of project facilities or the pipe/contractor yards that would be affected by Project construction activities. No hazardous sites were found. We believe the database searches performed appropriately address the VDEQ’s concerns in this regard.

80. The Department of Mines, Minerals, and Energy commented that East Tennessee should consider underground coal mines along the route. As stated in the BA prepared

for this project, East Tennessee consulted mining operators along the proposed pipeline route, including those within the Middle Creek and Indian Creek watersheds. No known underground mine works are located along or crossed by the proposed route.

81. VDOT commented that any land use requirements, lane closures, traffic control or work zone safety issues should be closely coordinated with VDOT. All work with the potential to affect roadways or other transportation facilities should be coordinated with the VDOT Abingdon Residency and VDOT Tazewell Residency. East Tennessee proposes to consult with the VDOT on appropriate road crossing methods. We believe these measures will satisfy the coordination requirements recommended by VDOT.

82. Mr. Damon and Ms. Wallin filed a comment letter on the EA on January 17, 2006. They expressed continued concern for the effects of pipeline construction on individual property owners' wells and springs as well as any municipal well drilled by Tazewell County, and questioned whether the Commission would hold East Tennessee accountable for remediation of any damages to wells and springs, or for other property damages. As stated in the EA, East Tennessee would continue to work with the planners of the Tazewell County municipal well and would perform pre- and post-construction testing of all existing water supply wells and springs within 150 feet of the construction work area. In the event that water quality or yield is permanently impaired as a result of construction activities based on post-construction testing, East Tennessee has stated it would arrange for the water supply well or spring to be repaired or replaced. In addition, East Tennessee has stated it would work with landowners to resolve any claims involving property damage related to the pipeline.

83. Mr. Damon and Ms. Wallin also requested that we fully address the concerns raised by the Virginia SHPO in a letter dated December 16, 2005. Environmental Condition No. 21 ensures proper coordination with the SHPO and compliance with section 106 of the National Historic Preservation Act.

84. Ms. Doris J. Pruettt filed a comment letter on January 19, 2006, requesting additional communication with East Tennessee to determine a mutually agreeable pipeline route through Circle P Farms and expressed concern for the proximity of the pipeline to a family residence. East Tennessee filed a response on January 25, 2006, stating that based on geotechnical data only one feasible route is available through the property. The pipeline would pass no closer than 300 feet from the residence of concern. East Tennessee would restore disturbances on Circle P Farms to original condition or better and committed to further communication with Ms. Pruettt.

85. Ms. Teresa Pruettt, an adjacent landowner to Circle P Farms, commented in a letter dated January 26, 2006 with concerns regarding proper notification of a route realignment that affects her property and impacts to her residence and a family cemetery. East Tennessee responded on February 6, 2006, acknowledging an inadvertent omission

in notification and a commitment to work with the landowner to arrive at an agreement concerning the proposed location and installation of the pipeline across her property. We will evaluate East Tennessee's route realignment and mitigation measures to ensure impacts are minimized.

86. Based on the discussion in the EA, we conclude that if the Jewell Ridge Lateral Project is constructed and operated in accordance with East Tennessee's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

87. 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 or operation of facilities approved by this Commission.<sup>17</sup> East Tennessee shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies East Tennessee. East Tennessee shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

88. The Commission on its own motion received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to East Tennessee pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations authorizing East Tennessee to construct, own, operate, and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned, as discussed in this order, and on the following:

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<sup>17</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (1) East Tennessee's completion of the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's Regulations;
- (2) East Tennessee's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) East Tennessee's filing actual tariff sheets reflecting the modifications discussed in this order, no later than 30 days but not sooner than 60 days prior to the in service date; and
- (4) East Tennessee's compliance with the environmental conditions listed in Appendix A to this order.
- (5) East Tennessee's execution of a firm contract, equal to the level of service represented in its precedent agreement, prior to the commencement of construction.

(C) East Tennessee is required to inform the Commission which recourse rate option it selects for the Jewell Ridge Lateral at the time it accepts this certificate.

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

(E) Sequent Energy's motion for late intervention is granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

## Appendix A

### East Tennessee Natural Gas, LLC Environmental Conditions

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

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

facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. East Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and 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 *Upland Erosion Control, Revegetation, and Maintenance Plan*, 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. **At least 60 days before that start of construction**, East Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how East Tennessee will implement the mitigation

measures required by this Order. East Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how East Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - d. the training and instructions East Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - e. the company personnel (if known) and specific portion of East Tennessee's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) East Tennessee will follow if noncompliance occurs; and
  - g. 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 mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. East Tennessee shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the ROW. **Prior to construction**, East Tennessee shall mail the complaint procedures to each landowner whose property would be crossed by the Project.
- a. In its letter to affected landowners, East Tennessee shall:
    - (1) instruct the landowners to call East Tennessee's Hotline with their concerns; the letter should indicate how soon a landowner should expect a response; and
    - (2) instruct the landowners that, if they are not satisfied with the response from East Tennessee's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.

- b. In addition, East Tennessee shall include in its bi-weekly status report a copy of a table that contains the following information for each problem/concern:
  - (1) the date of the call;
  - (2) the identification number from the certificated alignment sheets of the affected property;
  - (3) the description of the problem/concern; and
  - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
  
8. East Tennessee shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
  
9. East Tennessee shall file updated status reports prepared by the environmental inspector with the Secretary on a bi-weekly basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. the current construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(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);

- c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by East Tennessee from other federal, state or local permitting agencies concerning instances of noncompliance, and East Tennessee's response.
10. East Tennessee must receive written authorization from the Director of OEP **before commencing service of the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, East Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions East Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. East Tennessee shall revise its Erosion and Sediment Control Plan (E&SCP) to include vegetation monitoring of the construction work areas for at least two growing seasons. East Tennessee shall file its revised E&SCP with the Secretary for review and written approval by the Director of OEP **prior to construction**.
13. **Prior to construction**, East Tennessee shall file the final results of the geophysical survey with the Secretary and the Virginia Department of Conservation and Recreation (VDCR) Karst Protection Coordinator. The final results shall describe any features found, and include proposed avoidance, preventive, or mitigative measures, and responses to any VDCR recommendations. Any route realignments must comply with condition No. 5.
14. **Prior to hydrostatic testing**, East Tennessee shall consult with the VDCR to identify hydrostatic test water discharge locations and methods to avoid potential sinkhole development, file a hydrostatic test water discharge plan, including

VDCR comments on that plan, with the Secretary for review and written approval by the Director of OEP.

15. **Prior to construction**, East Tennessee shall consult geotechnical and drilling consultants and review workspace requirements to evaluate the feasibility of crossing the Little, North Fork Holston, or Clinch Rivers using a conventional bore and file the results of its analysis with the Secretary.
16. East Tennessee shall reduce additional temporary workspaces at the Little and North Fork Holston Rivers to the minimum required to construct the waterbody crossing and file any revised site-specific crossing plans with the Secretary for review and written approval by the Director of OEP, **prior to construction**.
17. East Tennessee shall file with the Secretary a site-specific explanation of the need for the requested workspaces at the Clinch River crossing and the conditions that would not permit a 50 foot setback. East Tennessee shall file any revised site-specific crossing plans with the Secretary for review and written approval by the Director of OEP, **prior to construction**.
18. **Prior to construction**, East Tennessee shall consult with the Virginia Department of Game and Inland Fisheries (VDGIF) and the U.S. Fish and Wildlife Service (FWS) to develop a schedule for the pipeline crossings of Indian Creek, Clinch River, North Fork Holston River, Little River, Laurel Creek, Little Tumbling Creek and UT Indian Creek 2, and file that schedule, including VDGIF and FWS comments on the schedule, with Secretary for review and written approval by the Director of OEP. East Tennessee shall also notify the Claypool and Richlands Water Treatment Plants at least one week prior to the start of construction at the Little River.
19. **Prior to hydrostatic testing of the pipeline**, East Tennessee shall file with the Secretary a plan for the withdrawal of hydrostatic test water from any state-designated Threatened and Endangered Species Waters, for review and written approval by the Director of OEP. East Tennessee shall also file FWS and VDGIF comments on the plan.
20. East Tennessee shall not begin construction activities until:
  - a. the FERC receives FWS comments on the surveys;
  - b. the FERC completes formal consultation with the FWS; and
  - c. East Tennessee receives written notification from the Director of OEP that construction and/or implementation of conservation measures may begin.

21. East Tennessee shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, and use of all staging, storage, or temporary work areas and new or to-be-improved access roads until:
  - a. East Tennessee files with the Secretary cultural resource survey and evaluation reports, any necessary treatment plans, and the Virginia State Historic Preservation Office comments; and
  - b. the Director of OEP reviews all cultural resources survey reports and plans, and notifies East Tennessee in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material 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.”**

22. East Tennessee shall hire and fund a third-party compliance inspection contractor to work under the direction of the Commission staff for the sole purpose of monitoring compliance with environmental conditions and mitigation measures. East Tennessee shall develop a draft monitoring program and obtain proposals from potential contractors to provide monitoring services, and file the program and proposals with the Secretary for review and approval by the Director of OEP. The monitoring program shall include:
  - a. the employment by the contractor of one full-time on-site monitor per construction spread;
  - b. the employment by the contractor of a compliance manager to direct and coordinate with the monitors, manage the reporting system, and provide technical support to the FERC staff as needed to meet the objectives of the monitoring program;
  - c. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required by East Tennessee based on site-specific conditions;
  - d. maintenance of files for the daily and/or weekly inspection reports submitted by both the third-party monitors and East Tennessee’s environmental inspectors; and
  - e. a discussion of how the monitoring program can incorporate and/or be coordinated with the monitoring or reporting that may be required by other federal and state agencies.

23. Prior to construction across the Clinch River, North Fork Holston River, or Little River, East Tennessee should consult with the VDCR's Division of Planning and Recreation Resources to develop a plan to alert and redirect recreational boaters from instream construction work areas. The plan shall be filed with the Secretary for review and approval by the Director of OEP.
24. East Tennessee shall limit routine vegetation maintenance clearing to a corridor not exceeding 30 feet in width in the Indian Creek, Clinch River, Little River, and North Fork Holston River watersheds, at the following approximate mileposts (MP): MP 8.0 to 9.0, MP 9.5 to 12.8, MP 12.8 to 14.5, and MP 20.9 to 27.
25. East Tennessee shall revise its vegetation maintenance practices at section 8.2.2 of its Erosion and Sediment Control Plan, to allow permanent revegetation of a riparian strip that measures 50 feet back from the mean high water mark adjacent to perennial and intermittent waterbodies in the Indian Creek, Clinch River, North Fork Holston River, and Little River watersheds.

## **Appendix B**

East Tennessee Natural Gas, LLC  
Docket No. CP05-413-000

### Pro Forma Tariff Sheets

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