

119 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation

Docket No. CP06-421-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued April 12, 2007)

1. On July 17, 2006, Transcontinental Gas Pipe Line Corporation (Transco) filed an application, as supplemented on July 20, 2006, under sections 7(b) and 7(c) of the Natural Gas Act requesting authority to abandon, construct, and operate pipeline facilities in Virginia (the Potomac expansion project). We will authorize Transco's proposals, with appropriate conditions, as discussed below.

I. Background

2. Transco is a natural gas company that transports gas in interstate commerce. Transco's pipeline facilities extend from supply sources in Texas, Louisiana, Mississippi, Alabama, and the offshore Gulf of Mexico area through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey to termini in the New York City metropolitan area.

II. Proposals

3. Transco states that the Potomac expansion project is designed to provide up to 165,000 dekatherms (Dth) per day of firm transportation service to three gas distribution customers – Baltimore Gas and Electric Company (BG&E), Columbia Gas of Virginia (CGV), and Washington Gas Light Company (Washington Gas). Specifically, Transco proposes to (1) construct and operate approximately 12.67 miles of 42-inch diameter loop on its mainline from milepost (MP) 1,400.32 to the suction side of Transco's existing compressor station 165 at MP 1,412.99 in Pittsylvania County, Virginia (the Pittsylvania loop); (2) construct and operate approximately 3.72 miles of 42-inch diameter loop from MP 1,436.3 to a tie-in with Transco's existing 42-inch diameter Mainline D loop at the existing Brookneal meter station at MP 1,440 in Campbell County, Virginia (the Campbell loop); and (3) replace, by abandonment and removal, approximately 3.18 miles

of existing 30-inch diameter pipeline (Mainline B) with approximately 3.43 miles of 42-inch diameter pipeline (the proposed facilities will be known as Mainline D) between an interconnect with the Dominion Cove Point LNG Pipeline (Dominion) at MP 1,586.2 and an existing mainline valve setting at MP 1,589.6 in Fairfax County, Virginia (the Fairfax replacement loop). Transco also requests authority to abandon in place an existing 0.25 mile portion of pipeline under road crossings in Fairfax County.

4. As part of the Pittsylvania loop proposals, Transco proposes to install a new pig launcher facility¹ and mainline valve setting at the beginning of the loop, a new valve setting with crossover headers at an existing mainline valve site at MP 1405.21, and a new pig receiver facility and valve setting at compressor station 165. Transco will also make piping modifications, install actuators, and replace a valve at compressor station 165. As part of the Campbell loop proposals, Transco proposes to install a pig launcher facility and valve setting at the beginning of the loop. As part of the Fairfax replacement loop, Transco proposes to install pig launcher and receiver facilities and a valve setting at the beginning of the loop (MP 1,586.17) and install a pig launcher facility and replace a valve setting at the end of the loop.²

5. In regard to the facilities at MP 1,586.17, Transco proposes to install an above-ground pig launcher and receiver facility on a strip of land owned by the Virginia Run Community Association, Inc. (VRCA).³ Currently, Transco owns and operates two 30-inch diameter pipelines (Lines A and B) and one 36-inch diameter pipeline (Line C) on VRCA's land under a 1949 easement. Transco will install the pig launcher and receiver facilities on Line B where pigs will be retrieved from Line B and inserted into Line D. Transco will enclose the pigging facilities inside a 40-foot by 115-foot fenced area.⁴ The proposed pig launcher and receiver facility will be adjacent to an existing natural gas pipeline and pig launcher owned by Dominion, an electric transmission line owned by Dominion Virginia Power Company, and a cell phone tower owned by

¹ A pipeline "pig" is a device used to clean or inspect the pipeline. A pig launcher or receiver is an above-ground facility where pigs are inserted into or retrieved from the pipeline.

² In addition, Transco will make piping modifications and install actuators at its existing compressor station 160 and install pressure control equipment at an existing mainline valve site under section 2.55(a) of the regulations. These facilities are in Rockingham County, North Carolina.

³ The VRCA is a community association of approximately 1,400 homes in Fairfax County, Virginia.

⁴ Originally, Transco proposed a 75-foot by 175-foot fenced area. Transco will also enclose a 20-inch tap valve on Line A within a 10-foot by 10-foot fenced area.

T-Mobile, as well as homes in the Virginia Run community. Transco's and Dominion's pipelines are interconnected at this point.

6. Transco asserts that it held an open season from July 19 through August 17, 2005.⁵ As a result of the open season, Transco executed binding precedent agreements with BG&E, CGV, and Washington Gas for 165,000 Dth per day of firm transportation service. The precedent agreements require that Transco and the Potomac expansion shippers execute firm transportation agreements with 20-year primary terms within 30 days of Transco's receipt and acceptance the authorizations granted herein.

7. Transco states that it will provide firm transportation service from its Cascade Creek interconnect with East Tennessee Natural Gas Company (East Tennessee) in Rockingham County, North Carolina and its interconnect with Pine Needle LNG Company, LLC (Pine Needle) in Guilford County, North Carolina to (1) an existing delivery point with BG&E at the Beaver Dam meter station in Baltimore County, Maryland; (2) a new delivery point with CGV in Prince William County, Virginia;⁶ and (3) an existing delivery point with Washington Gas at the Rock Creek meter station in Montgomery County, Maryland. Transco asserts that the Potomac expansion shippers will be responsible for contracting with gas suppliers to arrange deliveries to East Tennessee and Pine Needle.

8. Transco estimates that the Potomac expansion facilities will cost approximately \$73.7 million. Transco states that the cost of the facilities will be financed initially through short-term loans and funds on hand and that permanent financing will be undertaken at a later date as part of its long-term financing program.

9. Transco states that it will provide firm transportation service under Rate Schedule FT, subject to the terms and conditions of its FERC Gas Tariff. Transco proposes to charge the Potomac expansion shippers an illustrative \$0.24947 incremental daily maximum reservation rate based on the straight fixed-variable rate design methodology and an incremental cost of service, and a maximum commodity rate of zero. The reservation rate is based on a depreciation rate of 2.35 percent and an overall pre-tax return of 15.34 percent. In addition, the Potomac expansion shippers will be charged

⁵ Between August 5 and August 12, 2005, Transco solicited offers from its existing shippers for the turn back of capacity that could be used to provide service for the Potomac expansion project. Transco states that it did not receive any offers to permanently relinquish firm transportation capacity.

⁶ Transco contemplates constructing a meter capable of delivering natural gas to CGV under its subpart F blanket certificate. The meter will be at MP 1,580.6.

electric power, fuel retention, annual charge adjustment, and other generally applicable charges and surcharges under Rate Schedule FT.

10. Transco contends that there is a strong market demand for the Potomac expansion project because it executed binding precedent agreements for 100 percent of the project's capacity. In addition, Transco points out that growth forecasts for the south Atlantic and mid-Atlantic regions support the need for the project.

III. Interventions

11. Notice of Transco's application was published in the *Federal Register* on July 31, 2006 (71 Fed. Reg. 43,144). The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214. The North Carolina Utilities Commission (North Carolina UC) filed a notice of intervention.

12. Virginia Natural Gas, Inc. (Virginia Natural Gas); the VRCA; Michelle E. Brooke; Charles Caldwell; John Enescu; William and Janice Hassan; Sandra L. Jones; Philip Shapiro; and Melinda Welch filed untimely motions to intervene. In addition, Philip Andrew Cookson and Sylvia Ehinger filed a joint, untimely motion to intervene.⁷ Virginia Natural Gas, the VRCA, and the Virginia Run intervenors have demonstrated an interest in this proceeding and have shown good cause for intervening out of time. Further, the untimely motions to intervene will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motions to intervene.

13. The motions to intervene of the County of Pittsylvania, Virginia and the Delmarva Power & Light Company (Delmarva) included comments.⁸ The North Carolina UC's notice of intervention also included comments. In addition, there were comments in the untimely motions of the VRCA and the Virginia Run intervenors.⁹

⁷ The individuals submitting untimely motions to intervene are residents of the Virginia Run community and will be collectively referred to as the Virginia Run intervenors.

⁸ On January 22, 2007, Delmarva withdrew its comments.

⁹ We also received approximately 115 letters expressing opposition to, or raising concerns about, Transco's proposal from residents of the Virginia Run community.

14. On August 29, 2006, Transco filed an answer to the North Carolina UC's comments. On December 15, 2006, Transco filed an answer to the comments of the VRCA and the Virginia Run intervenors. On December 21, the VRCA filed an answer to Transco's answer.

15. Answers to answers are not allowed under our rules.¹⁰ Nevertheless, we will accept VRCA's answer to Transco's answer because this pleading provided information that assisted us in our decision making.

IV. Procedural Motions

16. On December 20, 2006, Philip Shapiro, one of the Virginia Run intervenors, filed a discovery request under Rule 406¹¹ of the regulations, requesting that Transco provide written responses to data requests. On December 29, 2006, Philip Cookson and Sylvia Ehinger, Virginia Run intervenors, also filed a joint discovery request. Further, on January 24 and January 26, 2007, Philip Shapiro and the VRCA, respectively, filed motions under Rules 406 and 410¹² to compel discovery, suspend further procedural events, and establish an evidentiary hearing schedule. On January 31, 2007, Philip Cookson and Sylvia Ehinger filed a joint motion to compel discovery. (The January 24, 26, and 31 filings will be collectively referred to as "motions to compel discovery.") Transco, BG&E, CGV, and Washington Gas filed answers opposing the motions to compel discovery. The VRCA filed an answer to Transco's, BG&E's, CGV's, and Washington Gas' answers.

17. The requests for discovery in this proceeding were filed under Rule 406. The motions to compel discovery were filed under Rules 406 and 410. Rules 406 and 410 are in subpart D of Part 385 of the regulations. Subpart D of Part 385 is entitled "Discovery Procedures for Matters Set for Hearing Under Subpart E." Specifically, section 385.401(a) under subpart D provides that "this subpart applies to discovery in proceedings set for hearing under subpart E of this part." We have not set this proceeding for hearing under subpart E. Thus, formal discovery is not available in this proceeding and there is no obligation for Transco to respond to the discovery requests.¹³ Further, as discussed in more detail below, discovery is not necessary here because the

¹⁰ 18 C.F.R. § 385.213(a)(2) (2006).

¹¹ 18 C.F.R. § 385.406 (2006).

¹² 18 C.F.R. § 385.410 (2006).

¹³ *E.g., Entergy Services, Inc.*, 62 FERC ¶ 61,073 at 61,369 (1993); *Tennessee Gas Pipeline Co.*, 61 FERC ¶ 61,082 at 61,335 n.12 (1992).

written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. Consequently, we will deny the motions to compel discovery.

18. In cases not set for hearing, interested members of the public are invited to file written comments or protests. To the extent our staff needs additional information to address the comments, staff will issue data requests. While companies are not required to respond to “data requests” from intervenors, they frequently respond to such inquiries to the extent they find them reasonable. If intervenors seek information staff deems relevant to its analysis of a project that a company does not provide, staff will submit its own data request seeking such information from the applicant. Our staff reviews such comments or protests and information. The issues raised are addressed in the environmental analysis or the Commission order as appropriate. In this case, our staff issued a data request to Transco requiring a response to each of the alternatives raised by the parties.

V. Discussion

19. Since the abandonment, construction, and operation proposals herein will involve facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment, construction, and operation of the proposed facilities are subject to the requirements of subsections (b) and (c) of section 7 of the Natural Gas Act.

A. Adequate Notice

1. Background

20. On July 25, 2006, Transco notified landowners and abutters in the Virginia Run community of the Potomac expansion project.

2. Pleadings

21. The Virginia Run intervenors and the VRCA, as well as most of the residents of the Virginia Run community who wrote letters concerning Transco’s proposals, contend that Transco’s July 25 notice describing its proposals was “materially defective,” preventing them from making informed comments on the proposals. Specifically, they contend that nothing in the notice to landowners indicated that any permanent above-ground pigging facilities would be constructed on VRCA’s land. The Virginia Run intervenors and the VRCA assert that they should have received timely information directly from Transco regarding the above-ground pig launcher and receiver facilities planned for their community or should have been able to readily discern such information by referring to Transco’s application and supporting exhibits. Instead, they assert that there was no disclosure in the application or exhibits, or in the July 25 notice sent to Virginia Run residents, that above-ground pigging facilities would be constructed in the

common area of the community. They allege that it was not until September 1, 2006 that members of the VRCA Board of Directors were told about the above-ground pigging facilities and that Transco did not distribute any information about the above-ground facilities until Transco provided sketches to two landowners sometime around November 7, 2006. The Virginia Run intervenors and the VRCA conclude that Transco failed to comply with the notice requirements in section 157.5 of the Commission's regulations and request that Transco be directed to start the case again by providing an accurate statement to every landowner about the full scope and scale of the above-ground pigging facilities accompanied by drawings and diagrams, including any plans to add more above-ground pig launchers and receivers on VRCA's land, so that interested parties will be in a better position to comment on Transco's proposals.

22. In its December 15, 2006 answer and its March 12, 2007 comments, Transco alleges that it complied with the notice requirements in section 157 of the regulations. Specifically, Transco asserts that a member of the VRCA Board attended an open house on January 26, 2006 where the existence of the above-ground pigging facilities was disclosed and that in June 2006 it met with the VRCA Board where the size and location of the above ground pigging facilities were discussed. Transco contends that the July 25 notice informed affected landowners that its application in this proceeding was available for public inspection in the library in their community and on the Commission's website. Transco asserts that the July 25 notice included a link to the project website and an e-mail address and telephone number of a Transco representative to contact for additional information. Transco also contends that it published a newspaper notice, provided additional project information on request, responded to individual questions and concerns, and communicated with representatives of VRCA's Board of Directors. Transco asserts that the communications with VRCA's Board of Directors included teleconferences, meetings, and e-mail exchanges. Transco includes a timeline describing its notifications and communications with affected landowners.

23. In a December 19, 2006 filing, Philip Cookson and Sylvia Ehinger, Virginia Run intervenors, take issue with Transco's timeline asserting, among other things, that the July 25 notice to affected landowners described only the replacement of pipeline facilities and did not mention the construction of permanent above-ground pigging facilities in their community, that the mapping supplement to the application that mentioned the above-ground facilities was a non-internet public document in the library with only milepost numbers to describe the location of the facilities, that it was not until a September 1, 2006 e-mail to VRCA's Board of Directors that the pig launcher and receiver were first mentioned and described, and that it was not until a meeting between Transco and 70 Virginia Run homeowners on November 28, 2006 that the homeowners were made aware of the above-ground pigging facilities.

3. Commission Holding

24. The Virginia Run intervenors and the VRCA, as well as the residents of the Virginia Run community contend that Transco's July 25 letter did not provide adequate notice about the above-ground pig launcher and receiver facilities, which prevented them from making informed comments on the proposals. Transco asserts that its notice was adequate.

25. An examination of the record in this proceeding indicates that VRCA's Board of Directors learned about the above-ground pig launcher and receiver facilities at the latest on September 1, 2006. Further, the record shows that on November 28, Transco and 70 homeowners held a meeting where the homeowners were informed of the proposed above-ground pigging facilities. In the weeks that followed the November 28 meeting, we received eight motions to intervene from Virginia Run residents and a motion to intervene from the VRCA. One of the motions to intervene contained over 200 signatures. Also, we received approximately 110 letters from concerned Virginia Run residents. The motions and letters were from Virginia Run residents who knew about Transco's proposals and expressed concerns about the impact of the facilities on their community. On January 16, 2007, we published an environmental assessment (EA) for Transco's proposals. We mailed copies of the EA to the VRCA and affected landowners and abutters. The VRCA and the Virginia Run intervenors filed joint comments to the EA, which they later supplemented, as did an individual homeowner in Virginia Run, describing in detail their opposition to Transco's proposed facilities. On March 2, 2007, we held a public meeting at the Virginia Run Community Center. Approximately 420 people signed the attendance sheet for the March 2 meeting. After that meeting, we received approximately 143 comment letters.

26. While we conclude that Transco met the Commission's minimum reporting requirements under section 157.6 of the regulations, we note that the notice could have identified the locations of above-ground facilities. Even so, the record demonstrates that the residents of the Virginia Run community knew about the pig launcher and receiver facilities and participated fully with many relevant and germane comments about the facilities. As described above, at least 70 residents met with Transco on November 28 to discuss the proposed facilities. After the meeting, we received nine motions to intervene,¹⁴ with one motion containing more than 200 signatures, and over 110 letters. We mailed an EA that addressed issues concerning the pig launcher and receiver facilities to the VRCA and affected residents and received comments to the EA. Taken together, these filings by the Virginia Run community raised detailed and specific issues about

¹⁴ Although the motions to intervene were untimely, we granted the motions and allowed the Virginia Run intervenors to fully participate as parties in this proceeding, as described above.

safety, security, technological alternatives to pigs, the economic impact of the proposals on their community, compensation for landowners, and alternative sites for the pig facilities. Further, on March 2, 2007, we held a public meeting, with approximately 420 people signing the attendance sheet, where the residents again suggested alternative locations for the facilities and alternative technologies in lieu of the facilities, expressed safety and security concerns, and discussed the potential impact on property values. For these reasons, we find that the residents of the Virginia Run community were not prevented from making informed comments on Transco's proposed facilities. The record in this proceeding and the ability of Virginia Run residents to comment on the proposals would not be meaningfully enhanced if we were to require Transco to start this case again with another notification to affected landowners.

B. Certificate Policy Statement

27. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.¹⁵ The Certificate 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 Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance 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.

28. 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 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 pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered.

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

29. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Here, Transco proposes to charge incremental rates to recover the costs of the proposed Potomac expansion project. We have previously determined that where a pipeline proposes to charge an incremental rate for new construction, it satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁶ Thus, there is no subsidization here.

30. In addition, the proposed Potomac expansion project will not have any adverse operational impact on Transco's existing customers as a result of the construction. Further, since the expansion shippers will use the capacity of the proposed facilities to serve the incremental growth requirements of their markets, existing pipelines and their customers will not be adversely affected by Transco's proposals.

31. Under section 7(h) of the Natural Gas Act, an applicant with a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed facilities, when it cannot reach a voluntary agreement with the landowner. Landowners whose land may be condemned have an interest in the applicant's proposals, as does the community near the right-of-way.¹⁷ In our consideration of landowner and community interests under the Certificate Policy Statement, we seek to avoid unnecessary construction in order to minimize the applicant's power to condemn land to construct facilities under the eminent domain rights conveyed by the Commission's certificate.¹⁸

32. Here, nearly all of the proposed facilities will be constructed entirely within or parallel to existing pipeline and utility rights-of-way. The Pittsylvania and Campbell loops will have a 90-foot-wide construction right-of-way and overlap Transco's existing right-of-way by 30 feet. The new permanent right-of-way will add 35 feet to the existing permanent right-of-way. The Fairfax replacement loop will have a 104-foot to 107-foot construction right-of-way and will be constructed within Transco's existing permanent right-of-way. Thus, we find that any impacts on landowners and communities near the pipeline route will be minimal.

¹⁶ See *Eastern Shore Natural Gas Co.*, 95 FERC ¶ 61,344 (2001); *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,380 (2001); *Texas Eastern Transmission Corp.*, 92 FERC ¶ 61,285 (2000).

¹⁷ Certificate Policy Statement, 88 FERC at 61,748.

¹⁸ *Id.* See also *Order Clarifying Statement of Policy*, 90 FERC at 61,398.

33. There is a strong market demand for the Potomac expansion project as demonstrated by the fact that Transco signed precedent agreements for all of the capacity of the proposed project. In addition, Transco's existing customers will not subsidize the project. There will be no degradation of service to Transco's existing customers or any adverse effects on existing pipelines or their customers. Further, adverse impacts on landowners and neighboring communities will be minimal. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the Natural Gas Act, that the public convenience and necessity requires approval of Transco's Potomac expansion project.

C. The Pig Launcher and Receiver Facilities

34. In its application, Transco proposes to construct and operate an above-ground pig launcher and receiver facility on VRCA's land at MP 1,586.17. In its comments filed on March 12, 2007 and its response to a data request filed on March 13, 2007, Transco states that it would be willing to consider installing a "Y" connection, called a "piggable Y," between Lines A and B at MP 1,586.17 to eliminate the need for a pig receiver and associated valves and piping for Line B by allowing pigs to pass from Line B to Line A. Transco's new proposal will not eliminate the necessity for constructing a pig launcher and associated valves and piping for Line D.

35. Specifically, under the modified proposals set forth in its filings, Transco would in 2007 install the pig launcher and associated valves and piping for Line D as originally proposed. The above-ground facilities for Line D would include the launcher, two valve operators, and bypass piping. These facilities would be enclosed by two fenced areas – an 817 square foot area around the launcher and a 663 square foot L-shaped area around the above-grade valve operators. In addition, Transco proposes to construct temporary facilities to connect Line B to Line A. The temporary facilities would include a 20-inch tap valve at Line A. The operator for this valve would be above grade and enclosed by a 10-foot by 10-foot fence.¹⁹

36. In 2008, Transco proposes to remove the 20-inch tap valve and fenced area at Line A and install the piggable "Y," as well as add a 30-inch mainline valve on Line A and a 30-inch mainline valve on Line B.²⁰ The piggable "Y" will eliminate the need for a pig receiver and associated valves and piping for Line B by allowing pigs to pass from Line B to Line A. The above-ground portions of the mainline valves will be enclosed by a 512 square foot L-shaped fenced area, rather than the originally proposed 100 square foot

¹⁹ This tap valve and fenced area were included in Transco's original proposals.

²⁰ Due to design and delivery requirements, Transco states that the piggable "Y" cannot be delivered and installed in time to provide service to its expansion customers for the 2007-2008 winter heating season.

area near Line A and be in addition to the Line D fenced areas described above. Transco's proposal to install the piggable "Y" and eliminate the receiver for Line B reduces the total fenced area from 4,700 to 1,992 square feet.²¹

37. In its filings, Transco contends that its suppliers indicated that the proposed piggable "Y" is "possibly compatible" with the pigs it uses to clean and inspect its pipelines,²² since the piggable "Y" is not typically used onshore for internal inspection. Thus, Transco asserts that the piggable "Y" is "not a proven technology" and that it will need to confirm compatibility with Transco's system once the detailed design for the piggable "Y" facilities is complete.²³ In the event that its suppliers do not confirm that the piggable "Y" will work with Transco's cleaning or inspection pigs through the design process or during subsequent operation, Transco contends that it will have to modify the piggable "Y" facilities or revert back to its original plan to install a receiver on Line B.

38. Transco's modified proposals in its March 12 comments and its March 13 response to a data request will reduce the area that is fenced in the Virginia Run community from 4,700 to 1,992 square feet. In addition, the proposals will enable Transco to provide service to BG&E, CGV, and Washington Gas during the 2007-2008 winter heating season. For these reasons, we will authorize Transco's proposals to construct and operate pig launcher facilities for Line D. We will also authorize Transco to construct and operate temporary facilities to connect Line B to Line A conditioned on Transco's installing a piggable "Y" under section 2.55(a) of the regulations within 18 months of the date of the order in this proceeding or demonstrating that the piggable "Y" is not technologically feasible. Until the feasibility of the piggable "Y" is determined, we will require Transco to submit to the Secretary of the Commission (Secretary) quarterly reports detailing the status of feasibility studies, as well as the construction progress for the piggable "Y." In the event that Transco determines that the piggable "Y" is not technologically feasible, Transco shall submit, for our approval, reports to justify its conclusion and submit a revised plan.

²¹ Under the original proposals, the fenced area around the pig launcher and receiver facilities totaled 4,600 square feet (a 40-foot by 115-foot area) and the fenced area around the Line A tap totaled 100 square feet (a 10-foot by 10-foot area).

²² Transco's March 13 response to a data request, Question 7 at 1.

²³ *Id.*, Question 7 at 2.

D. The North Carolina UC's Comments

39. The North Carolina UC comments that expansion projects should stand on their own, with the cost of all facilities needed to deliver incremental capacity allocated properly. The North Carolina UC cites a recent case where Transco was authorized to construct and operate facilities at a cost of \$34.4 million to reduce nitrogen oxide emissions at compressor station 170 in Appomattox, Virginia to comply with Virginia's implementation plan for the Clean Air Act.²⁴ The North Carolina UC notes that the construction of facilities resulted in additional horsepower potential at compressor station 170. Although it admits that the issue may not be ripe, the North Carolina UC contends that in order for the market to allocate capital efficiently, the feasibility of an expansion project should depend on the project's own merits and not upon the availability of pressure on the system already paid for by other shippers.

40. In our certificate orders, we attempt to ensure the proper allocation of costs and rate certainty to the extent possible. Under the Certificate Policy Statement, there is a presumption for incremental rates, if the incremental rate is in excess of the maximum system-wide rate.²⁵ We recognize the possibility of "cheap expansions" that rely on facilities previously constructed and paid for by others.²⁶ However, there is no evidence that that is the situation here. The incremental rates proposed and approved in this proceeding are calculated to recover the costs associated with the proposed service. Thus, as we found above, there should be no subsidization of this project by existing shippers.

VI. The EA

41. On February 3, 2006, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Potomac Expansion Project* (NOI). We mailed the NOI to approximately 500 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, property owners along the proposed route, and parties on the Commission's official service list for this proceeding. We received responses to the NOI from the Fairfax County Park Authority, the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, the Virginia Department of Environmental Quality (VADEQ), Fairfax County and Pittsylvania County, Virginia, the VRCA and several landowners.

²⁴ *Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,093 (2005).

²⁵ Certificate Policy Statement, 88 FERC at 61,745.

²⁶ *Id.* at 61,746.

42. On January 16, 2007, we issued an EA for Transco's project. The EA assessed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, cultural resources, land use, air quality and noise, reliability and safety, cumulative impacts from the proposed construction, and alternatives. We mailed the EA to federal, state, and local government agencies; elected officials; intervenors in the proceeding; and landowners and abutters. We received 236 comments after the EA was issued. The majority of these comments focused on the impacts of the proposed pig launcher and receiver facility at MP 1,586.17.

43. In the EA, we applied our four-factor procedure for determining the need to include non-jurisdictional facilities in our environmental review and found that CGV's facilities are not subject to our review.

A. An Environmental Impact Statement (EIS) or EA

44. The VRCA and the Virginia Run intervenors contend that we should have prepared an EIS, rather than an EA, because the pigging facilities involve a major federal action significantly affecting the quality of the human environment.

45. Under section 380.6(a)(3) of our regulations, an EIS will normally be prepared for "[m]ajor pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline."²⁷ Since Transco's proposals do not involve major construction or construction in a new right-of-way, we conclude that an EIS is not required here.

B. Safety

46. We received numerous comments regarding the siting of the proposed pigging facilities in Fairfax County, Virginia. The majority of the concerns, including those expressed by an engineer consulted by residents of the Virginia Run community (Mr. Jeff Holloway), deal with the perceived safety of the proposed facility. The United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (DOT) administers the national regulatory program that insures the safe transportation of natural gas and other hazardous materials by pipelines. The federal safety standards for natural gas pipelines are found in Part 192 of Title 49 of the Code of Federal Regulations. These regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. Our regulations require that a certificate holder design, install, inspect, test, construct, operate, replace, and maintain its facilities in accordance with these federal

²⁷ 18 C.F.R. § 380.6(a)(3) (2006).

safety standards. As such, we conclude that the project will be safe and will not need to be moved solely because of operational safety concerns.

47. In comments, we were asked how large an area would be impacted if a pipeline incident were to occur. There are many factors that influence the magnitude of an impact, if any, from an incident. The DOT regulations at 49 C.F.R. Part 192 require that pipeline companies institute monitoring programs that include aerial surveillance, ground surveillance, and integrity testing based on the location of high consequence areas along the route. These programs are designed to detect leaks and other potential issues before they become significant and are effective at avoiding major pipeline incidents. In this section of pipeline, the area of impact for a particular incident would depend on a number of factors including the actual pipeline pressure at the time of the incident, the time required to close valves and isolate the pipeline, and the size of the pipe breach (for example, a pinhole leak or a full rupture).²⁸ In general, the pipeline company can avoid catastrophic failures by adhering to federal safety regulations. The probability of an incident occurring at the proposed pigging facilities is extremely unlikely. Based on historic trends and data, the proposed facilities may result in 0.01 public fatality per year per 1,000 miles of pipeline.²⁹ Overall, the risk from the new replacement pipeline is not significantly different from the current situation.

48. Several commenters expressed concern about the ability of emergency response vehicles to enter Wetherburn Drive, a dead end street where the pigging facilities will be located, at the same time that residents are trying to leave if an accident were to occur. Under the DOT's regulations, Transco must establish an emergency plan that includes procedures to minimize the hazards in a natural gas pipeline emergency.³⁰ Key elements to the plan include receiving, identifying, and classifying emergency events, gas leakage, fires, explosions, and natural disasters; establishing and maintaining communications with local fire, police, and public officials, and coordinating emergency response; emergency shutdown of system and safe restoration of service; making personnel, equipment, tools, and materials available at the scene of an emergency; and protecting people first and then property, and making them safe from actual or potential hazards. If an accident were to occur at its proposed facilities, Transco contends that it would isolate the affected pipeline section by closing the block valves that control the flow of gas, which would limit the amount of gas that could escape. Transco also asserts that local

²⁸ Using DOT's formula (49 C.F.R. § 192.903), the potential zone affected by the heat emitted from a pipeline rupture is based on the product of 0.69 and the square root of the maximum allowable operating pressure of the pipeline in pounds per square inch multiplied by the pipeline diameter in inches, which would be approximately 810 feet.

²⁹ See the DOT's "Annual Report on Pipeline Safety – Calendar Year 1987."

³⁰ 49 C.F.R. § 192.615 (2006).

emergency responders would be in charge of any evacuations that are necessary and would establish a safe perimeter and control access to the site. Further, Transco contends that it communicates with local emergency responders on a frequent basis through an annual letter, face-to-face meetings, table-top drills, and training provided by local Transco personnel. Transco maintains that it developed an interactive emergency response training course that is provided to local emergency responders. With these considerations in mind, we conclude that Transco's emergency plan is adequate.

49. A commenter expresses concern about the possibility of a vehicle striking the pigging facilities. In this order, we will require Transco to create, in consultation with the VRCA, a visual screening plan. Further, there will be fencing surrounding the above-ground facilities. Thus, any foreign objects, like vehicles, will likely come into contact with the screening mechanisms before contacting the pigging facilities, reducing the likelihood of any impacts on the facilities. In addition, the above-ground portion of the pigging facilities will not be under pressure during normal operating conditions, which will reduce the potential for cigarettes or fireworks igniting gas within the pipeline (the concerns of some commenters) or of a gas release, even if a vehicle came into contact with the pigging facilities.

C. Property Values

50. Many commenters express concern about the potential diminution of property values that could result from the siting of additional above-ground facilities in the area. Some of the comments referenced local real estate appraisals, asserting that property values in close proximity to the above-ground facilities would drop drastically. The above-ground facilities proposed for this location would result in an incremental increase of above-ground facilities already existing at this site. While it is possible that the addition of such facilities might impact the resale value of surrounding property, we find the extent of such impact to be speculative and, on balance, not sufficient to alter our determination.

51. We also received comments suggesting that Transco replace pipeline outside of the Virginia Run community, rather than inside the community, and away from a Class 3 (high consequence) area.³¹ The need for gas by Washington Gas determines the location of the pipeline terminus. The proposed facilities cannot be located any place else. We also note that a Class 3 DOT designation includes almost all of Fairfax County.

³¹ Class 3 refers to an area that extends 220 yards on either side of the centerline of any continuous one mile length of pipeline with 46 or more buildings intended for human occupancy or where the pipeline lies within 100 yards of any building, or small well-defined outside area occupied by 20 or more people on at least five days a week for 10 weeks in any 12-month period.

52. Several commenters question placing an industrial facility within a residential neighborhood. There are currently above-ground facilities within the Virginia Run community and adjacent to the proposed pigging facilities. While placement of the proposed pigging facilities may increase the industrialized nature of the Virginia Run location, placement at a site where no above-ground facilities currently exist would completely change the land use of the area where there are no facilities. As discussed above, Transco committed to reducing the footprint of the above-ground facilities to be more consistent with those already present at the Virginia Run site. We conclude that the proposed site is preferable to a site where there are no facilities.

53. One commenter asserts that the recommendation that Transco consult with the VRCA regarding a visual screening plan should include residents of Virginia Run. The recommendation was based on our belief that the VRCA, which represents the Home Owners Association, would consider the interests of its residents. We believe that our condition that Transco consult with the VRCA is adequate.

54. Many residents of the Virginia Run community raise concerns about the venting or blowing down of pipelines during inspections and cleanings, contending that these events would necessitate the evacuation of numerous private residences. Transco asserts that use of a pig on its mainline has never resulted in an evacuation. During normal maintenance, Transco contends that it will use a portable blowdown silencer/separator, which will result in a sound reduction to 50 decibels on the A weighted scale (dBA) at a distance of 100 feet. This will equate to noise volumes on a quiet street.³² Further, Transco contends that a main line blowdown will not be required to run a smart pig, and if a mainline blowdown is needed, it will be done at the Manassas compressor station or the valve site in Chantilly, and will not impact residents of Virginia Run.

55. Due to the large number of commenters expressing concern about the construction of above-ground facilities in a residential area and because construction-related activities could affect neighborhood roads and adjacent properties, we will require Transco to develop environmental complaint resolution procedures. These procedures will provide landowners with a mechanism for contacting Transco to resolve concerns during construction. In addition, the procedures will include information about contacting our Enforcement Hotline in the event landowners are not satisfied with responses from Transco. Transco will provide the procedures to all directly affected landowners, including the VRCA. The VRCA will be able to make the information available to residents who will not be directly affected by land-disturbing activities, but could be indirectly affected by construction-related activities such as noise, dust, or traffic.

D. Terrorism

³² Simon Fraser University, 1999, Handbook for Acoustic Ecology.
<http://www.sfu.ca/sonic-studio/handbook/Decibel.html>

56. We received comments contending that a new above-ground facility sited in close proximity to existing pipelines and high voltage wires would increase the probability of a terrorist attack. In approving new projects, we take seriously concerns regarding terrorism and, in our experience, the same is true of natural gas companies. The Department of Homeland Security (DHS) coordinates the efforts of all executive departments and agencies to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States. The Commission, in cooperation with other federal agencies, industry trade groups, and interstate natural gas companies, is working to improve pipeline security practices, strengthen communications within the industry, and extend public outreach in an ongoing effort to secure pipeline infrastructure. Given the myriad natural gas pipeline facilities throughout the United States, it is highly improbable that any particular facility will be the target of a terrorist act.

57. Several commenters raise questions about a DHS requirement for fencing with barbed wire on top. In Transco's February 26, 2007 filing, Transco states that in response to a request from the VRCA, it obtained a waiver from the DHS to alleviate the need for barbed wire in exchange for increasing the height of the fence to eight feet.

E. Alternative Sites

58. The EA considered reasonable alternatives, but most commenters contend that we should take another look at alternative sites. Many comments request an alternate location for the pigging facilities in Fairfax County, suggesting the immediate north or south side of U.S. Route 29. Each alternative would involve the construction of between 0.65 and 0.7 mile of additional pipeline to reach these sites and the construction would be adjacent to at least 40 additional residences within the Virginia Run community.

59. In addition, siting the pigging facilities on the north side of U.S. Route 29 would place the facility within the viewshed of several other residences within the Virginia Run community, a residence outside of the community, and the Centreville Presbyterian Church. Further, construction of the pigging facilities at this alternative site would require the Fairfax replacement loop to cross two existing pipelines, a powerline corridor, and a road. Typically, extra work area would be required at each of these locations, resulting in additional environmental impacts. We also received comments from residents adjacent to this alternative location asking that the facilities not be located on the north side of Route 29.³³ Because the proposed pigging location at Virginia Run has existing above-ground facilities, the visual impacts would be greater at the location north of Route 29. Further, merely transferring similar impacts from one set of residents to another set of residents without environmental advantages is not sufficient justification

³³ Comments received at the March 2, 2007 meeting.

for modifying a proposed facility site. As stated previously, we believe the proposed facilities will be constructed in a safe manner. Thus, we conclude that the proposed location is preferable to the north-of-Route-29 alternative site.

60. Siting the pigging facilities south of U.S. Route 29 on Transco's existing corridor would result in the same construction impacts as the north-of-Route 29 alternative described above, plus it would necessitate that the replacement loop cross Route 29. Also, at this alternative location, a residence (and potentially a church that is finalizing construction plans) could be impacted. Typically, construction across major roadways requires additional temporary workspace to conduct a bored crossing. This additional workspace would likely necessitate the clearing of additional trees on the north and south sides of the highway. Further, constructing the facilities at this location would not only transfer impacts from one set of residents to another set of residents, but create greater impacts due to the loss of trees and place an above-ground facility where none currently exists. For these reasons, we conclude that the proposed location in Virginia Run is preferable to the south-of-Route-29 alternative site.³⁴

61. Some commenters suggest the upland area adjacent to Cub Run stream as another alternative. This location would be on the border between Fairfax County Park Authority parkland and Virginia Run. Siting at this alternative would place the pigging facilities within the viewshed of Virginia Run community residents, as well as park users, and border a wooded area that is used for nature watching. Locating the facilities within Fairfax County Park Authority property would not be consistent with the intended use of the park (established green infrastructure³⁵ and a walking and biking trail) and would create visual impacts on the surrounding area. While the trail extends past Transco's proposed location at Virginia Run for the pigging facilities, we conclude that the proposed location adjacent to other above-ground utilities will reduce the impacts on those using the trail.

62. Another commenter contends that unobtrusive sites should be selected for the location of above-ground facilities. The EA determined that the pigging facilities will be adjacent to and be similar in character to existing above-ground structures, reducing the visual impacts associated with this facility. Further, our condition to develop a visual screening plan in coordination with the VRCA will reduce visual impacts. Moving the

³⁴ One commenter contends that the EA is deficient due to an inaccurate alternatives analysis, asserting that the EA was wrong in stating that there would not be access for the U.S. Route 29 alternatives. We acknowledge that the EA was not correct on this point, since there is access though the Centreville Presbyterian Church parking lot. Nevertheless, the analysis in the EA is not deficient since our conclusions are not dependent on the issue of access.

³⁵ <http://www.fairfaxcounty.gov/parks/trailmgmt.htm>

proposed site of the above-ground facilities from a location adjacent to existing above-ground natural gas infrastructure to an area where no facilities currently exist would only be warranted if doing so would pose a significant environmental advantage. We agree with the alternatives analysis in the EA which did not find such an advantage.

F. Other Alternatives

63. Some commenters suggest that Transco expand the pipeline diameter from its Manassas compressor station to the proposed terminus. This would involve the additional replacement of approximately 2.8 miles of 30-inch with 42-inch diameter pipeline, increasing the amount of pipeline to be replaced to 6.23 miles. Under this alternative, the pipeline would need to cross U.S. Route 29, Route 66, and Bull Run Creek and would be adjacent to several more homes. These impacts would be in addition to the impacts that are currently proposed. We conclude that the impacts associated with constructing 2.8 miles of pipeline in addition to the original 3.4 miles of pipeline (an 82 percent increase) is not an environmentally preferable alternative.

64. Other commenters suggest that Transco use a multidiameter pig capable of inspecting a 30-inch diameter pipeline (Line B) and Transco's proposed 42-inch-diameter pipeline (Line D) without the need for above-ground facilities to change pig sizes. This alternative would negate the need for constructing a pig launcher and receiver facility in Virginia Run. While a multidiameter pig capable of moving between 30-inch and 42-inch diameter lines does exist, Transco asserts that there is only one such pig in the industry and that it is not available to Transco. Transco contends that it would take approximately two years to design and develop a similar pig for its own use. In addition, Transco asserts that by connecting its existing Line B to Line D as suggested by the commenters (as opposed to connecting its 36-inch diameter Line C to Line D as proposed), system throughput would be reduced 50 million cubic feet (MMcf) per day below its design requirements. Further, the multidiameter pig would not be capable of passing through the two existing 24-inch diameter valves and may not be able to pass through existing sharp bends on Transco's system. Transco also states that the minimum radius of curvature of pipeline which this type pig can traverse is 5D. Thus, the valves and pipeline locations with ells that change direction sharply at river and road crossings would need to be replaced to allow the passage of the multidiameter pig. This could cause greater overall disturbance and environmental impact at sensitive areas such as waterbody crossings. Because this alternative would not be able to meet the project design requirements and would result in additional disturbance, we conclude that the proposed facilities would be preferable.

65. The VRCA requests that we review the possibility of replacing both of Transco's existing 30-inch diameter pipelines (Line A and B) with two 36-inch diameter pipelines. This alternative would allow Transco to use currently existing 30-inch to 36-inch multidiameter pigs, eliminating the need for the proposed pigging facilities. Transco

contends that this alternative would reduce the throughput of its facilities by 10 MMcf per day, which would not meet the project design requirements. In addition, Transco states that these multidiameter pigs cannot inspect 30- and 36-inch diameter pipelines on the same pig runs and that more runs would increase costs.

66. To make up for the loss of throughput that would result from this alternative, Transco would need to make equipment changes or facility additions elsewhere on its system. The accompanying disturbance and cost for these changes would add to the cost of the project. Further, this alternative would require the replacement of two pipes instead of one, increasing the impacts on landowners on Line A due to the need for extra workspace along the outer edge of the existing right-of-way. Transco states that this alternative would also delay the project by an estimated 10 to 12 months for the manufacture of 6.86 miles of 36-inch diameter pipeline, rather than the 42-inch diameter pipe that is proposed. Because this alternative would not meet the project needs and would have increased environmental impact, we conclude that this alternative is not preferable.

67. The VRCA also suggests that Transco replace its existing 36-inch diameter pipeline (Line C) with a 48-inch diameter pipeline, instead of the proposed 42-inch diameter pipeline, to allow Transco to use a 36-inch to 48-inch multidiameter pig. This multidiameter pig would eliminate the need for the pigging facilities. In its March 13, 2007 comments, Transco contends that this device is not reliable, noting the fact that the device was used, but failed on Transco's system. In addition, Transco contends that the 48-inch diameter pipeline would necessitate the additional removal of trees and cause disruption to nearby landowners because of Line C's location on the outer edge of Transco's existing right-of-way. Thus, because of the lack of reliability of the multidiameter pig and the additional environmental impacts, we believe this alternative is not preferable.

68. Philip Cookson, an abutter to the proposed facility and a Virginia Run intervenor, contends that a tap could be placed below ground in Virginia Run and that pigging operations could be conducted by the use of temporary pigging facilities that would be installed only when pigging runs are needed. In its response to our March 8, 2007 data request, Transco asserts that constructing the temporary pigging facilities would still require the placement of pipe facilities above ground, including valves and blowdown mechanisms. Further, Transco avers that it would need to construct a road approximately 1,000 feet long to accommodate the heavy temporary pig launching and receiving equipment.

69. While its proposals will have more above-ground facilities than Mr. Cookson's alternative, Transco's pigging facilities will not be constructed over live pipelines or have recurring construction related disturbances from excavation of the below ground tap for every pig run (both cleaning and smart pig runs). The access road that would be needed

for transporting the temporary pig launching and receiving equipment would require widening and upgrading of the existing walking and biking trail through the Virginia Run community. In the alternative, Dominion's access road would need to be upgraded to accommodate heavy equipment. If Dominion's access road were to be used, this would also require that the heavy equipment cross the pipelines. A crossing procedure would need to be developed to eliminate the possibility of equipment causing a rupture to any of the existing lines. Due to the repeated increased level of construction disturbance, the safety concerns involved with heavy equipment crossing the pipelines, and working over live pipelines, we conclude that this alternative is not preferable.

G. Comment Letters on Other Subjects

70. The VADEQ and the Fairfax County Park Authority submitted comments regarding construction procedures for the proposed project. We believe that construction according to Transco's Upland Erosion Control, Revegetation and Maintenance Plan and its Wetland and Waterbody Construction and Mitigation Procedures will adequately minimize or mitigate impacts. We encourage Transco to continue to work with these agencies to further minimize impacts. Further, the Fairfax County Park Authority must grant a construction permit that could include additional mitigation measures as outlined in its comments on the EA.

71. In a comment letter, the United States Fish and Wildlife Service (FWS) contends that Transco's assertion that all surveys were completed for the federally threatened Roanoke logperch is not correct. For this reason, we will require that Transco complete its surveys for this species prior to construction.

H. Conclusion

72. Based on the analysis in the EA and the supplemental information filed by Transco in response to comments in this proceeding, we conclude that if Transco constructs the proposed pipelines and associated facilities in accordance with its application, supplements, and our mitigation measures listed below, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

73. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws,

may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁶

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

VII. Moving the Proposed Facilities for Cost Reasons

75. The Virginia Run intervenors contend that the proposed facilities should be moved to an alternative site and that the increased costs resulting from moving the facilities should be borne by the beneficiaries of Transco's proposals, rather than burdening the Virginia Run community with safety, security, and economic costs. The Virginia Run intervenors assert that the increased costs would be imperceptible to the residential and industrial end users of Transco's customers.

76. As discussed above, the decision to approve the proposed site of the pigging facilities was based on our findings that the facilities were safe and that the many alternative sites examined in this order and the EA were not preferable. Thus, for the reasons stated previously in this order, we will not move the proposed site of the pigging facilities.

VIII. Requests for an Evidentiary Hearing

77. The VRCA and the Virginia Run intervenors request an evidentiary hearing, contending that a hearing would develop a record about safety and security issues, alternative technologies, alternative sites, Transco's evaluation of safety versus cost-recovery considerations in choosing a site for the pigging facilities, Transco's attempt to "conscript" Virginia Run residents as involuntary facility watchmen, and Washington Gas' claims that its customers are at risk for \$13 million of additional costs for replacement gas if the Potomac expansion project facilities are not in service for the 2007-2008 winter heating season. Further, they contend that an evidentiary hearing is necessary so that the decision in this case can be based on facts, not the "unsworn-to assertions" and "hearsay" in Transco's filings.

³⁶ 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).

78. Section 7 of the Natural Gas Act provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary trial-type hearing is necessary only when there are material issues of fact in dispute that cannot be resolved on the basis of the written record.³⁷

79. As demonstrated by the discussion above, the written evidentiary record provides a sufficient basis for resolving the issues raised in this proceeding.³⁸ We have satisfied the hearing requirement in this proceeding by giving interested parties an opportunity to participate through evidentiary submissions in written form.³⁹

80. As to the allegations that we must hold an evidentiary hearing because the statements in Transco's pleadings constitute nothing more than unsworn-to assertions and hearsay, Rule 2005 of the regulations provides, in relevant part, that all filings with the Commission must be signed, that the signature constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true as stated to the best knowledge and belief of the signer.⁴⁰ Transco's pleadings cannot be characterized as unsworn-to assertions and hearsay.

81. Thus, for the reasons stated above, we will deny the requests for an evidentiary hearing.

IX. Ex Parte Communications

82. The VRCA and the Virginia Run intervenors contend that we engaged in *ex parte* communications with Transco. Specifically, they assert that Transco sent a letter to the VRCA proposing to reduce the visual impacts associated with the above-ground facilities five days before the EA was published and that this "clairvoyant" letter from Transco to the VRCA "uncannily anticipated" the precise visual impact measure recommended in the EA.

³⁷ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

³⁸ There is no evidence to support the allegation that the location of the pigging facilities will require local residents to serve as involuntary watchmen.

³⁹ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

⁴⁰ 18 C.F.R. § 385.2005 (2006).

83. The intervenors produce no evidence beyond mere speculation that there were *ex parte* communications in this case. We frequently require applicants who propose to construct above-ground facilities to screen the facilities to reduce visual impacts on nearby residents.⁴¹ Consistent with our practice, Transco in its application proposed to install a seven-foot-tall fence with barbed wire on top.⁴² On January 11, 2007, however, Transco sent a letter to the VRCA proposing to install an eight-foot-tall, vinyl-coated, chain link fence. Contrary to the assertions of the VRCA and the Virginia Run intervenors, the January 11 letter did not “anticipate” the screening requirements that were recommended in the EA, which did not recommend an eight-foot-tall fence, but instead recommended that Transco continue to work with the VRCA to develop a visual screening plan and that Transco file with the Commission the plan along with comments from the VRCA. In the environmental conditions to this order, we continue to require that Transco work with the VRCA to develop a visual screening plan, notwithstanding Transco’s January 11 proposal to construct a higher fence.⁴³

84. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, 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 authorizing Transco to construct and operate the Potomac expansion project, as described more fully in the order and in the application.

(B) Transco shall construct and operate temporary facilities to connect Line B to Line A, conditioned on Transco’s installing a piggable “Y” under section 2.55(a) of the regulations within 18 months of the date of the order in this proceeding or demonstrating that the piggable “Y” is not technologically feasible.

(C) Permission for and approval of Transco’s abandonment of facilities on the Fairfax replacement loop, as more fully described in the order and in the application, are granted.

⁴¹ *E.g.*, *Southern Natural Gas Co.*, 115 FERC ¶ 61,328 at 62,204 (Environmental Condition 22) (2006); *Weaver’s Cove Energy, LLC*, 112 FERC ¶ 61,070 at 61,551 (Environmental Conditions 26 and 27) (2005).

⁴² *See* Transco’s Final Environmental Report filed on July 17, 2006, Volume 1, at pp. 1-7 and 8-17.

⁴³ *See* Condition 13.

(D) The certificate issued herein is conditioned on Transco's compliance with all of the applicable regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20.

(E) Transco shall execute firm service agreements equal to the level of service represented in its precedent agreements prior to commencing construction.

(F) Transco shall file with the Commission actual tariff sheets with the incremental rates no earlier than 60 days and no later than 30 days prior to the date the facilities go into service. The compliance filing should contain documentation in the format prescribed by Part 154 of the regulations identifying the final costs to be recovered in the incremental rates.

(G) The certificate issued herein is conditioned on Transco's compliance with the environmental conditions set forth in Appendix B to this order.

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

(I) Transco's Potomac expansion facilities shall be constructed and made available for service within one year of the date of the order in this proceeding.

(J) The untimely motions to intervene are granted.

(K) The motions to compel discovery are denied.

(L) The requests for an evidentiary hearing are denied.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

Appendix A

Motions to Intervene

Atmos Energy Corporation
Baltimore Gas and Electric Company
Columbia Gas of Virginia, Inc.
Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (joint motion)
County of Pittsylvania, Virginia
Delmarva Power & Light Company
KeySpan Energy Delivery Companies⁴⁴
PECO Energy Company
Piedmont Energy Resources & Trade LLC
PSEG Energy Resources & Trade LLC
Public Service Company of North Carolina, Inc.
Statoil Natural Gas LLC
Washington Gas Light Company

⁴⁴ The KeySpan Energy Delivery Companies consist of Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc.; and Essex Gas Company.

Appendix B

Environmental Conditions for the Potomac Expansion Project

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

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of 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 the project construction and operation.

3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (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 location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facility

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.

Transco's exercise of eminent domain authority granted under section 7(h) of the Natural Gas Act in any condemnation proceedings related to this order must be consistent with the authorized facility and location. Transco's right of eminent domain granted under 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. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, 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 must 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 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 resource 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 its certificate and **before the start of construction**, Transco shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Transco will

implement the mitigation measures required by this order. Transco must file revisions to the plan as schedules change. The plan shall identify:

- a. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Transco will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Transco 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. Transco shall employ at least one EI. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;
 - d. 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.
8. Transco shall file updated status reports prepared by the head EI 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 spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the FERC and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of 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 Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.

9. Transco must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days** of placing the certificated facility in service, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facility has been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identify which of the certificate conditions Transco has complies 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.
11. Transco shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads **until**:
- a. Transco files a supplemental survey report for any extra work areas, access roads, pipe/contractor yards, and other remaining areas requiring survey, and the Virginia State Historic Preservation Office's (SHPO's) comments on the report;
 - b. Transco files the evaluation reports for archaeological sites 44PY0259, 44PY0260, 44PY0262, 44PY0264, and 44PY0270, structures 071-5212, 071-5221, 071-5222, and any additional sites requiring evaluation, the results of testing at cemetery 44PY0274, and the SHPO's comments on the reports;
 - c. Transco files the SHPO's comments on the "Assessment of Effect" for Little Cherrystone;
 - d. Transco files any required avoidance and/or treatment plan(s), and the SHPO's comments on any plan(s); and
 - e. The Director of OEP reviews and approves all reports and plans and notifies Transco in writing that it may proceed with any treatment or construction.

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.**"

12. Transco shall file documentation of concurrence from the VADEQ that the project is consistent with the Virginia Coastal Management Program **prior to construction** of the Potomac expansion project.

13. Transco shall continue to work with VRCA to develop a visual screening plan for the proposed piggig facilities at MP 1,586.17. **Prior to construction**, Transco shall file the visual screening plan, including any consultations or comments from VRCA with the Secretary for review and approval by the Director of OEP.

14. Transco shall file the results of the habitat surveys for the federally endangered Roanoke logperch. The survey reports must contain the following information:

- a. name(s) and qualifications of the person(s) conducting the surveys;
- b. method(s) used to conduct the surveys (including the criteria Transco used to determine whether or not suitable habitat for the Roanoke logperch is present);
- c. date(s) of the surveys;
- d. results of the surveys; and
- e. any comments from the FWS regarding the survey results.

Transco shall not begin construction **until** the staff completes any required section 7 consultations for the Roanoke logperch with the FWS and the Director of OEP notifies Transco in writing that construction or use of mitigation may begin.

15. Transco shall file with the Secretary quarterly reports detailing the status of technological feasibility studies for the piggable “Y.” In the event that it determines a piggable “Y” is not technologically feasible, Transco shall file reports that justify its conclusion and a detailed plan for an alternative design. Transco shall not begin construction of an alternative design until this information has been filed for the review and written approval of the Director of OEP.

16. Transco shall develop and implement an environmental complaint resolution procedure that remains active for at least three years following the completion of construction for the Potomac expansion project. The procedures 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 rights-of-way. Prior to construction, Transco shall mail the environmental complaint resolution procedures to each landowner whose property would be crossed by the project.

- a. In the letter to affected landowners, Transco shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon to expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they should call Transco's Hotline; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that, if they are still not satisfied with the response from Transco's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.

- b. In addition, Transco shall include in its biweekly status reports a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property and appropriate location by milepost;
 - (3) a 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.