

122 FERC ¶ 61,205
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.

Texas Eastern Transmission, LP

Docket No. CP05-392-001

ORDER AMENDING CERTIFICATE

(Issued March 5, 2008)

1. On November 1, 2007, Texas Eastern Transmission, LP (Texas Eastern) filed an application pursuant to section 7(c) of the Natural Gas Act¹ (NGA) and Part 157 of the Commission's regulations² to amend its certificate of public convenience and necessity issued on February 22, 2006, for the Accident Storage Enhancement Project.³ Texas Eastern seeks authorization to change the surface and bottom hole locations of three of the previously authorized wells at the Accident Storage Field (Accident field). Texas Eastern also requests authorization to change to the wellbore orientation of the remaining wells to be constructed.

2. As discussed below, we are granting Texas Eastern's requested certificate amendment.

Background and Proposal

3. Texas Eastern owns and operates an open-access pipeline system extending from southern Texas and offshore Gulf of Mexico to the Mid-Atlantic and Northeast areas. In December 1963, Texas Eastern was granted a certificate of public convenience and necessity for the acquisition, conversion, development, and operation of the Accident natural gas storage field in Garrett County, Maryland.⁴ Subsequent orders authorized

¹ 15 U.S.C. §§ 717, *et seq.* (2000).

² 18 C.F.R. Part 157 (2007).

³ *Texas Eastern Transmission, LP*, 114 FERC ¶ 61,185 (2006) (2006 Order).

⁴ *Texas Eastern Transmission Corp., et al.*, 30 FPC 1559 (1963).

Texas Eastern to construct and operate additional wells and compression, increase peak day withdrawals, and increase the maximum inventory of the field.⁵

4. The 2006 Order in this proceeding granted Texas Eastern certificate authority for the Accident Storage Enhancement Project to increase the maximum certificated capacity of the Accident field from 62.0 Bcf to 64.0 Bcf and working gas capacity from 15.3 Bcf to 18.3 Bcf. The construction activities authorized by the 2006 Order include drilling seven re-entry horizontal injection/withdrawal (I/W) wells at existing locations and two new I/W wells.⁶

5. In this application, Texas Eastern seeks to amend its certificate granted in the 2006 Order to construct one new and eight re-entry I/W wells, instead of two new and seven re-entry wells. One of the original two new wells and two of the original seven re-entry wells will be replaced by three different re-entry wells, which are at different locations in the field. In addition, based on geological and engineering information obtained as the result of construction thus far, Texas Eastern seeks amendment of its certificate authority in order to redirect, in wells not yet completed, the horizontal bottom hole location from a northeast to a southwest direction or vice versa, in case further geological information or revised assessment during drilling indicates the other direction would be more suitable.

6. Texas Eastern proposes the alternate well locations based on updated geological and engineering information gathered after encountering difficulties while constructing five of the authorized wells. Texas Eastern states that it has determined the three proposed well sites are superior to the previously authorized well locations due to simplified site access, fewer geological limitations, decreased landowner impact, decreased environmental impact, decreased overall impact, and decreased drilling costs relative to the authorized sites.

⁵ *Texas Eastern Transmission Corp.*, 34 FPC 572 (1965), 35 FPC 655 (1966), 114 FERC ¶ 61,185 (2006).

⁶ A re-entry well is an existing injection/withdrawal well that is re-entered and drilled to either a deeper location or extended horizontally. On June 13, 2007, the Commission's Office of Energy Projects issued a letter order granting Texas Eastern an extension of time until December 31, 2008, to complete construction of the facilities authorized in the 2006 Order.

7. Texas Eastern states the proposed amendment will not change the total certificated capacity of the field, its maximum deliverability, maximum shut-in reservoir pressure, or the total number of authorized injection/withdrawal wells.

Notice and Intervention

8. Texas Eastern's application for certificate amendment was noticed by publication in the *Federal Register* on November 20, 2007,⁷ with protests or interventions due by November 23, 2007. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works (ConEd) jointly filed a motion to intervene and submit comments, which are addressed below. On December 10, 2007, Texas Eastern filed a motion for leave to submit a late answer, which we will accept to ensure a complete record.⁸

Discussion

9. The Commission's 2006 Order found that Texas Eastern's proposed Accident Storage Enhancement Project satisfied the criteria of the Certificate Policy Statement for determining whether there is a need for the proposed project and whether the proposed project will serve the public interest.⁹ Texas Eastern has completed construction activities at five of the nine wells authorized by the 2006 Order. In this application, Texas Eastern seeks amendment of its certificate authority in order to change the location of three of the remaining wells authorized by the 2006 Order. The proposed replacement wells are existing wells in the Accident field that Texas Eastern will re-enter. Further, Texas Eastern seeks amended certificate authority to redirect the horizontal bottom hole location in these wells and the other remaining re-entry well based on updated geological and engineering information gathered after encountering difficulties during construction.

10. As discussed below, the Commission's staff has performed an engineering analysis. The analysis indicates that Texas Eastern's proposed changes in well location

⁷ 72 Fed. Reg. 65,319.

⁸ Because Texas Eastern's answer was filed in response to the comments included in ConEd's motion to intervene, the answer was required to be filed within 15 days. 18 C.F.R. § 385.213(d)(1).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

and drilling procedures are appropriate. Further, Texas Eastern's proposal will not change the total certificated capacity of the field or its maximum deliverability. Nor do the proposed changes alter the basis for the 2006 Order's finding that Texas Eastern's project satisfies the criteria of the Certificate Policy Statement and will improve the flexibility and reliability of Texas Eastern's storage and transportation services for its existing customers by enhancing the Accident field's performance, improving deliverability at lower inventory levels, and increasing the working gas capacity of the storage facility by 3.0 Bcf.¹⁰ ConEd questions, however, whether the presumption of rolled-in rate treatment established by the 2006 Order continues to be appropriate.

11. ConEd emphasizes that Texas Eastern's application for certificate amendment indicates that estimated total project costs have increased from \$20,547,000 to \$38,500,000. Therefore, ConEd argues that, before granting the requested certificate amendment, the Commission should require Texas Eastern to quantify the operational improvements that have resulted from the project to date and how much those improvements have already cost. ConEd further asserts that the Commission also should require Texas Eastern to quantify any further improvements that will be realized as the result of further expenditures. ConEd argues that if parties are to have a reasonable opportunity to address the question of rolled-in rate treatment in Texas Eastern's next rate case, they must have a clear statement from Texas Eastern today as to what benefits are expected to result from the second phase of this project.

12. We reject ConEd's request for the same reason the 2006 Order rejected its similar argument regarding Texas Eastern's original application for this project, i.e., that Texas Eastern had not demonstrated that the benefits from the project will exceed the costs. When Texas Eastern files under section 4 of the NGA to recover its costs, ConEd or any other party may seek to rebut the presumption of rolled-in rate treatment established by the 2006 Order by successfully arguing, as we explained in the 2006 Order, that the

¹⁰ The 2006 Order found that Texas Eastern's proposed improvements to existing wells and the addition of new wells, communication equipment, and water handling facilities will improve late season deliverability to the benefit of existing customers, thereby enhancing the operational flexibility of the Accident field. The Commission reasoned that the additional operating flexibility will support Texas Eastern's ability to provide hourly swings and no-notice services to all customers, allow Texas Eastern to decrease its reliance on existing storage operational flow orders (OFOs), and assist in managing line pack, imbalances, and interruptible storage, all to the benefit of its existing customers. 114 FERC ¶ 61,185 at P 16.

purported benefits of the project have failed to materialize¹¹ or, as we further clarify here, that the benefits are insufficient to justify rolled-in treatment for all of the project's final, actual costs.

13. In view of the above considerations, we will grant Texas Eastern's request for amended certificate authority to alter the location of three of its wells, convert one of the original two new wells to a re-entry I/W well, and change the wellbore orientation of a fourth, previously-approved re-entry well.

Engineering

14. In the 2006 Order, the Commission authorized Texas Eastern to construct nine wells, and five have been completed.¹² During the drilling of the horizontal portion of the five completed wells, Texas Eastern observed how the complex geology of the storage formation was influencing the azimuth directions of the horizontal sections, making it difficult to maintain the desired horizontal direction of the wellbore during drilling.¹³ Based on this geological and engineering information, Texas Eastern determined that wells oriented in either a northeast or southwest direction would provide better access to the storage formation and still enable Texas Eastern to obtain its authorized capacity and deliverability. Texas Eastern also determined that three of the four remaining unconstructed wells are not in the appropriate location to make optimal use of the northeast/southwest azimuth direction. Thus, Texas Eastern's requested certificate amendment will authorize it to re-enter, and extend horizontally in either a northeast or southwest azimuth direction, three alternate existing wells. In addition, for each remaining well, Texas Eastern will redirect the horizontal bottom hole location from

¹¹ 114 FERC ¶ 61,185 at P 22. We note that Texas Eastern's December 10, 2007 answer states at page 8 that as of the end of October 2007, it had spent \$27,336,540 on the Accident expansion project and expects to spend an additional approximately \$11,000,000 to complete the project as amended by the instant proposal. Moreover, although total costs will exceed the original estimate, Texas Eastern states that the total project costs would be slightly higher without the changes proposed in the instant application for certificate amendment.

¹² One was a new horizontal well and four were existing wells that were re-entered and extended horizontally.

¹³ Azimuth is the "horizontal direction expressed as the angular distance between the direction of a fixed point (as the observer's heading) and the direction of the object." Merriam-Webster's Collegiate Dictionary 82 (10th ed. 2002).

a northeast to a southwest direction or vice versa, in case further geological information or revised assessment during drilling indicates the other direction would be more suitable.

15. The Commission staff's engineering analysis confirms that it is possible, if the remaining wells are drilled in their original locations and those locations are just as geologically complex as the already constructed wells, that the horizontal sections could potentially end up located in less useful storage formation rock, which could affect Texas Eastern's ability to meet or achieve its authorized capacity and deliverability. The new locations have been chosen so that the bottom hole locations for both the preferred primary directions and the 180-degree alternate directions will still be in thick, less accessible areas of the storage formation. Staff's analysis also confirms that the substitution of the three alternate re-entry wells will not change the maximum authorized inventory of 64 Bcf, the maximum reservoir pressure of 3,265 psia, the maximum deliverability of 400 MMcf/d, or the total number of injection/withdrawal wells that the Commission has previously certificated for the Accident Storage Enhancement Project.

Environment

16. The Commission's staff prepared an environmental assessment (EA) for Texas Eastern's proposal. The EA was placed in the record in Docket No. CP05-392-001 on February 20, 2008. The EA addresses geology, mineral resources, soils, water resources, vegetation, wildlife, wetlands, federally listed threatened and endangered species, land use, cultural resources, air quality, noise quality, and alternatives.

17. Based on the discussion in the EA, we conclude that if constructed in accordance with Texas Eastern's application, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

18. 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 of facilities approved by this Commission.¹⁴

¹⁴ 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.*, 52 FERC ¶ 61,091 (1990), *aff'd in part*, 59 FERC ¶ 61,094 (1992).

19. 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 this proceeding. Upon consideration of the record,

The Commission orders:

(A) Texas Eastern's certificate issued on February 22, 2006 in Docket No. CP05-392-000 is amended as more fully described in the order and application.

(B) The maximum inventory of natural gas stored in the Accident field shall not exceed the certificated levels of 64 Bcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 3,265 psia, without prior authorization of the Commission.

(C) The Accident field shall be operated in such manner as to prevent/minimize gas loss or migration.

(D) Texas Eastern shall continue to comply with the engineering conditions set forth in the original certificate.

(E) Pursuant to section 157.20(b) of the Commission's regulations and the extension of time granted by the June 13, 2007 letter order of the Commission's Office of Energy Projects, Texas Eastern must complete construction of all authorized facilities and make them available for service by December 31, 2008.

(F) Texas Eastern shall comply with all other conditions of its original certificate.

(G) The authorization granted herein is subject to Texas Eastern's compliance with the specific environmental conditions in the appendix to this order. Texas Eastern shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Texas Eastern. Texas Eastern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

1. Texas Eastern would follow the construction procedures and mitigation measures described in its application and supplements and as identified in the EA, unless modified by this Order. Texas Eastern must:
 - a. request any modifications 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 OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during construction and operation of the project. This authority would 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 construction, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel would be informed of the environmental inspector's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facilities approved by 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.

5. Texas Eastern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, 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 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 resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities, and agreements with individual landowners that affect other landowners or could adversely affect sensitive environmental areas.
6. Within 60 days of the acceptance of this certificate and before construction begins, Texas Eastern shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Texas Eastern would implement the mitigation measures required by this Order. Texas Eastern must file revisions to the plan as schedules change.