

125 FERC ¶ 61,100
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.

Tennessee Gas Pipeline Company

Docket No. CP08-63-000

ORDER ISSUING CERTIFICATE

(Issued October 27, 2008)

1. On January 24, 2008, Tennessee Gas Pipeline Company (Tennessee) filed an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations seeking authorization to construct the Fitchburg Expansion Project (Fitchburg Project). The Fitchburg Project involves replacing approximately 5.15 miles of pipe with larger diameter pipe on Tennessee's Line 268A-100, the Fitchburg Lateral, in Lunenburg, Massachusetts and installation of pigging facilities. The expansion of the Fitchburg Lateral will allow Tennessee to provide firm transportation service for the Massachusetts Development Financial Agency (MassDevelopment).
2. As we explain below, the Commission finds that the requested authorization is required by the public convenience and necessity.

I. Background/Proposal

3. MassDevelopment is currently redeveloping the site of a former military base, Fort Devens, located in central Massachusetts. The site, known as the Devens Regional Enterprise Zone (Devens), encompasses approximately 4,000 acres that will accommodate a diverse residential and business community. MassDevelopment currently provides municipal services necessary to convert the former military base into the planned community.
4. Tennessee held an open season for the Fitchburg Project from October 2, 2006, to November 2, 2006. Tennessee posted a concurrent non-binding turnback request as part of the open season but received no turnback requests. As a result of the open season, Tennessee executed a binding precedent agreement with MassDevelopment for all of the project's expansion capacity, 12,300 Dth/d, for a primary term of twenty years. The firm transportation service will be provided pursuant to Tennessee's Rate Schedule FT-A.

Service will be provided from an interconnect on Tennessee's system with Maritimes and Northeast Pipeline system in Dracut, Massachusetts, to delivery points on the Fitchburg Lateral.

5. In order to provide 12,300 Dth/d of incremental firm transportation capacity to MassDevelopment, Tennessee proposes to replace approximately 5.15 miles of 6-inch diameter pipe with 12-inch diameter pipe on its Fitchburg Lateral beginning at mile post 268A-103+0.00. The Fitchburg Project also includes the installation of two above ground facilities: a pig launcher facility at existing Main Line Valve No. 268A-101A in Framingham, Massachusetts, at the start of the Fitchburg Lateral, and a pig receiver facility at an existing meter station MP 5.13 in Lunenburg, Massachusetts, at the end of the Fitchburg Lateral. The estimated cost of the project is approximately \$10.7 million.

6. Tennessee proposes to use as its initial rates its existing Part 284 open-access transportation system rates for firm service under Rate Schedule FT-A. Pursuant to the terms of the precedent agreement, Tennessee will charge MassDevelopment the maximum recourse rate applicable to Rate Schedule FT-A service.

7. Tennessee requests that the Commission make a predetermination supporting rolled-in rate treatment for the Fitchburg Project costs in Tennessee's next section 4 rate case. Tennessee believes the predetermination is appropriate because the revenues from services using the proposed expansion capacity are expected to exceed the incremental cost of service for the project. The estimated revenues are approximately \$754,600 compared to a cost of service of approximately \$43,300. This cost of service figure reflects only operation and maintenance expense and other taxes, and does not include depreciation expense, return on investment, and related income taxes because the shipper, MassDevelopment, is providing a contribution in aid of construction for the entire capital cost of the project. Because the incremental revenues will exceed the incremental cost of service, Tennessee states that rolling in the project costs and revenues will benefit existing customers.

8. Tennessee states that the precedent agreement provides for a final transportation service agreement between it and MassDevelopment that differs in some respects from the pro forma FT-A transportation agreement in Tennessee's tariff. These differences are described and addressed below.

II. Notice and Interventions

9. The Commission issued notice of Tennessee's application on February 5, 2008, which was published in the *Federal Register* on February 26, 2008.¹ Fitchburg Gas and

¹ 73 Fed. Reg. 10,239 (2008).

Electric Light Company, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., and National Fuel Gas Distribution Corporation filed timely motions to intervene. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²

10. On March 18, 2008, the Commonwealth of Massachusetts, Division of Fisheries & Wildlife (Massachusetts DFW) filed a motion to intervene out of time. On March 31, 2008, the Sunshine Nominee Trust, Mary Violette, Trustee filed a late motion to intervene. No party has opposed these motions to intervene. The Commission finds that granting these motions to intervene, filed less than 30 days after the stated deadline, will not unduly delay, disrupt or otherwise prejudice this proceeding, or place an additional burden on existing parties. Each movant has a demonstrated interest in the proceeding. Accordingly, pursuant to Rule 385.214(d) of the Commission's Rules of Practice and Procedure, the out-of-time motions to intervene are granted.³

III. Discussion

A. The Certificate Policy Statement

11. To determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our Certificate Policy Statement addressing new facilities.⁴ In this policy statement, we establish criteria for determining whether there is a need for a proposed project, balance the public benefits against potential adverse impacts of the project, and determine whether the proposed project will serve the public interest. Our goal in evaluating proposed projects 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, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

12. Under the Certificate Policy Statement, the threshold requirement for existing pipelines proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next

² 18 C.F.R. § 385.214 (2008).

³ 18 C.F.R. § 385.214(d) (2008).

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the new 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 location of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we evaluate the project by balancing the 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 the economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

13. The threshold requirement under the Certificate Policy Statement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Approval of the Fitchburg Project will have no immediate rate impact on Tennessee's existing customers as its current rates do not reflect any of the project's costs. Further, as discussed below, the Commission is making a predetermination supporting rolled-in treatment for the Fitchburg Project's costs because revenues from the expansion services are anticipated to exceed the incremental cost of service and rolled-in rate treatment therefore should benefit existing customers. In view of these considerations, the Commission finds that Tennessee's proposal will not result in Tennessee's existing customers subsidizing the proposed expansion capacity and services.

14. The next criterion the Commission considers under the policy statement is whether the applicant has made efforts to eliminate or minimize any adverse effects the new 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 location of the new facilities.

15. The Commission staff's engineering analysis confirms that Tennessee's proposed project to increase the diameter of 5.15 miles of 6-inch diameter pipe with 12-inch diameter pipe is properly designed to increase the capacity of the Fitchburg Lateral by 12,300 Dth/d in order to provide MassDevelopment with new firm transportation service. Further, Tennessee is not proposing any changes to its tariff or the rates charged to its existing customers as part of the project. In view of these considerations, the project should have no adverse non-rate impacts on Tennessee's customers.

16. Tennessee's proposed expansion capacity will not be used to replace any other pipelines' existing services, and no other pipelines or their customers have protested Tennessee's proposal or expressed any concerns. Therefore, the Commission finds that the project will not have an adverse impact on other existing pipelines or their captive customers.

17. Tennessee will place the replacement pipe almost entirely within the same ditch of the existing pipeline, within the existing easement. Thus, there should be minimal, if any, need for Tennessee to rely on certificate authority to invoke eminent domain.

18. For all these reasons, as well as the results of staff's environmental review, as discussed below, the Commission finds that Tennessee's proposed Fitchburg Project satisfies the Certificate Policy Statement and the public convenience and necessity standard in section 7 of the NGA.⁵

B. Presumption of Rolled-In Rate Treatment

19. As stated above, MassDevelopment has signed a precedent agreement with Tennessee for all of the proposed expansion capacity, 12,300 Dth/d, for firm service for 20 years. MassDevelopment has agreed to pay the maximum recourse rate under Rate Schedule FT-A. Tennessee estimates annual revenues for service using the expansion capacity at approximately \$754,600. Tennessee estimates the annual incremental cost of service at approximately \$43,300. This cost of service figure reflects only operation and maintenance expense and other taxes, and does not include depreciation expense, return on investment, and related income taxes because MassDevelopment is providing a contribution in aid of construction for the entire capital cost of the project.

20. Because the incremental revenues from the expansion capacity will exceed the associated incremental cost of service, rolled-in rate treatment for the project's costs and revenues should serve to reduce existing customers' rates. Therefore, the Commission finds that, absent a significant change in circumstances, there will be a presumption of rolled-in rate treatment for the Fitchburg Project's costs when Tennessee files under section 4 of the NGA to recover these costs

C. Non-Conforming Provisions in Transportation Agreement

21. Tennessee and MassDevelopment have entered into a precedent agreement which contemplates the execution of a transportation agreement substantially similar to the one attached as Exhibit A to the precedent agreement included in Tennessee's application.⁶

⁵ Consistent with Commission practice, Tennessee's certificate will include a condition that construction activities may not begin until Tennessee has executed final contracts for firm service volumes equivalent to those represented in its precedent agreement with MassDevelopment (i.e., 12,300 Dth/d). *See, e.g., Dominion Transmission, Inc.*, 124 FERC ¶ 61,146, at n. 11 (2008). *See also Petal Gas Storage, L.L.C.*, 120 FERC ¶ 61,226, at P 9-13 (2007) (clarifying policy regarding execution of final contracts prior to commencement of construction).

⁶ Application, Exhibit I.

Tennessee states that there are certain differences between the transportation agreement it will enter into with MassDevelopment and the pro forma FT-A transportation agreement set forth in Tennessee's tariff.⁷

22. Because Tennessee must construct facilities in order to provide transportation service for MassDevelopment, Sections 2.1 and 2.2 of Article II of the their unexecuted service agreement attached to the precedent agreement provide that Tennessee will notify MassDevelopment of the commencement date of service after Tennessee has received all necessary construction authorizations and completed construction of the facilities.

23. Article IV of Tennessee's and MassDevelopment's unexecuted service agreement provides that Tennessee shall construct the facilities necessary for it to receive and deliver gas for MassDevelopment as provided for under the service agreement.

24. Article XII, Section 12.1 provides that the twenty-year primary term of the service agreement will commence as of the commencement date of service as determined in accordance with the provisions of Article II.

25. The above-described provisions in Tennessee's and MassDevelopment's unexecuted service agreement deviate from the provisions in the pro forma FT-A agreement because the latter contemplate that the facilities necessary to render the transportation service for the shipper are already in place and that a specific date for the commencement of service therefore can be designated at the time the service agreement is executed. These deviations affect Tennessee's and MassDevelopment's substantive rights under the service agreement and therefore are material deviations.⁸ However, they simply reflect the special circumstance under which the contract will be executed (i.e., that necessary facilities must still be constructed). Moreover, these deviations from the provisions of the pro forma service agreement will not result in MassDevelopment's

⁷ Tennessee's FERC Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 156.

⁸ In several previous certificate proceedings, the Commission has reviewed and found acceptable similar non-conforming, materially deviating provisions relating to commencement date of service under circumstances where necessary facilities had not yet been constructed. *See, e.g., Tennessee Gas Pipeline Company*, 121 FERC ¶ 61,116, at P 11 (2007) and *Tennessee Gas Pipeline Company*, 116 FERC ¶ 61,075, at PP 20-21 (2006).

receiving a different quality of service from that received by or available to Tennessee's other customers.⁹

26. In view of the above considerations, the Commission finds that the above-described non-conforming provisions relating to the construction of facilities and commencement date of service do not present a substantial risk of undue discrimination. Therefore, the Commission will approve these non-conforming provisions in the service agreement with Mass Development. Nevertheless, once the non-conforming service agreement with MassDeveloped has been executed and prior to commencement of service, the contract still must be filed by Tennessee in accordance with section 154.112(b) of the regulations,¹⁰ clearly identifying the non-conforming provisions for review and approval.¹¹

IV. Environmental Analysis

27. On February 22, 2008, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Fitchburg Expansion Project; Request for Comments on Environmental Issues; and Notice of Site Visit* (NOI), which was published in the *Federal Register* on February 28, 2008, calling for comments by March 24, 2008.¹² The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; Native American Groups; local libraries and newspapers; and property owners affected by the proposed facilities. On April 1, 2008, staff conducted a site visit of the proposed Fitchburg Project. Prior to the completion of the environmental

⁹ Tennessee's tariff includes provisions setting forth the circumstances under which it will construct facilities, and what type of facilities it will construct, in order to provide service requested by a shipper. Tennessee's FERC Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 366.

¹⁰ 18 C.F.R. § 154.112(b) (2008).

¹¹ In this instance, the Commission was able to grant the request that it address the non-conforming provisions in the subject service agreement, notwithstanding that the unexecuted copy of the service agreement filed by the applicant did not identify the non-conforming provisions with italic and strikethrough print. The Commission reiterates that companies requesting the Commission to make determinations in section 7 certificate proceedings as to whether non-conforming provisions in service agreements are acceptable should provide unexecuted copies of the subject service agreements that clearly show how they differ from the pro forma service agreements in their tariffs. *See Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259, at P 33 (2007).

¹² 73 Fed. Reg. 10,761 (2008).

assessment (EA), the Commission received comment letters from the Town of Lunenburg, Joe and Sheila Bilotta, and the Sunshine Nominee Trust, Mary Violette, Trustee (Sunshine Trust). Tennessee filed responsive comments on April 7, 2008.

28. Following the site visit, and the receipt of comments and responsive comments, Commission staff issued an EA on June 2, 2008. The EA addresses potential impacts to geology and soils, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air and noise quality, reliability and safety, cumulative impacts, and alternatives. The EA addresses the environmental impacts of the project as proposed by Tennessee and the concerns identified by the public in response to the NOI, as described below.

29. The Commission received no further comments from the Town of Lunenburg, the Bilottas, or the Sunshine Trust following issuance of the EA, which addressed the concerns raised in their comments in response to the NOI. Those concerns and how they have been addressed are discussed below.

A. Town of Lunenburg

30. The Town Lunenburg raised three areas of concern: (1) protection of a grove of maple trees; (2) access to a mental health services business and potential damage to nearby mature oak trees; and (3) the effect construction activities would have on shade trees, and damage to a leach field and maple trees along a scenic road. In its responsive filing, Tennessee indicated that it had resolved the first issue by modifying the workspace in the areas of the maple sugar trees in order to avoid the mature trees. As to the second and third issues, Tennessee indicated that it was pursuing an alternative route. The EA noted that Tennessee's alternative route had become part of the proposed project and addressed the Town of Lunenburg's concerns, thereby minimizing the impacts to this area. Accordingly, we find that the Town of Lunenburg's concerns have been adequately addressed.

B. Surface Water and Wetlands

31. Joe and Sheila Bilotta indicated that their three-acre pond abuts the expected area of construction. The Bilottas asked that a route be chosen that would least affect the pond and surrounding wetlands. The Sunshine Trust raised similar issues about its pond in its comments.

32. Tennessee responded that the ponds and wetland resource area would be protected by its plan to complete construction in compliance with the Commission's Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Commission's Wetland and Waterbody Construction and Mitigation Procedures (Procedures). The EA found that there would not be any construction across the Bilottas' pond or the Sunshine Trust's pond and that there would be, therefore, no direct impacts on these

ponds. Further, the EA concluded that the mitigation measures agreed to by Tennessee would minimize indirect impacts; therefore, no significant impacts on these ponds are anticipated. As to wetlands, the EA concluded that, given the mitigation measures to be followed by Tennessee, any impacts associated with construction would either be minimal or avoided altogether.

C. The Sunshine Trust

33. In response to the NOI, the Sunshine Trust commented that an EA would be inadequate and that a more involved environmental review should take place in the form of the preparation of an environmental impact statement (EIS). Sections 380.5 and 380.6 of our regulations list actions that normally require an EA and an EIS, respectively. As envisioned in those regulations, an EIS will normally be prepared if the conclusion of an EA finds that an action would result in a significant impact. However, the EA concludes that no significant impacts on resources will result from construction of the project; therefore, preparation of an EIS is not warranted. We agree that the scope of the project supports this finding and will not require preparation of an EIS.

34. The Sunshine Trust also raised several other specific concerns, which are addressed below.

1. Growing Season

35. The Sunshine Trust commented that the construction activities should not take place during the growing season. As stated in the EA, Tennessee has committed to continuing to work with the Sunshine Trust to address the issue of avoiding the growing season, and states that if it is unable to avoid construction activities during the growing season, it will fully compensate the Sunshine Trust and any other landowners for losses directly resulting from construction activities.

2. Protection of Soil Resources

36. In response to the NOI, the Sunshine Trust expressed concern regarding the widening of the right-of-way during construction and requested that any disrupted or removed top soil be returned to its original condition. In response, Tennessee discussed mitigation measures such as segregating topsoil, separation of salvaged topsoil and subsoil, and the reclamation of segregated topsoil. The EA discussed soil issues and the mitigation measures required of Tennessee, such as adherence to the Plan, the Procedures, and other measures. The EA concluded that Tennessee's compliance with these mitigation measures would be adequate to minimize erosion and impacts to soils for the project.

3. Species Protection

37. In response to the NOI, the Sunshine Trust commented that special concern species should be inventoried and protected. In a letter dated April 8, 2008, the Massachusetts DFW indicated that it had reviewed the project and determined that it does not have any rare species concerns with the project. The EA concluded that no priority habitat would be affected by the project.

4. Underground Spring Runoff

38. The Sunshine Trust commented that water runoff from underground springs should be considered, including placement and management of dewatering structures. Tennessee states the springs are approximately 30- to 40-feet uphill from the boundary of the workspace and will not be affected by construction. Tennessee added that if the springs direct groundwater into the workspace, Tennessee will conduct necessary dewatering activities in compliance with the Plan and Procedures, its best management practices, and other measures. The EA noted the mitigation measures to be implemented by Tennessee, and concluded that potential impacts on groundwater would be minimized or avoided.

5. Storage of Equipment, Pipe, Backfill Material, and Debris

39. The Sunshine Trust commented that equipment, pipe, backfill material, and debris should not be stored on its property. In response, Tennessee stated that the Sunshine Trust's property would not be used to store any of these items, with the exception of soil associated with replacing the pipeline on the Sunshine Trust's property. The Commission finds that Tennessee's assurances are adequate for addressing the Sunshine Trust's concerns in this regard.

6. Soil Sample Testing

40. The Sunshine Trust commented that Tennessee should be required to test soil samples following the completion of construction activities. In response, Tennessee stated that it will conduct construction operations in compliance with the Plan; the Massachusetts contingency plan; and its own spill prevention, countermeasures, and control plan. The EA concluded that these measures would be adequate to minimize erosion and impacts to soils for this project.

7. Payment for Site Consultants

41. The Sunshine Trust commented that Tennessee should pay for on-site consultants to monitor conditions throughout construction. In response, Tennessee stated that it will provide at least one full-time environmental inspector during construction who will be responsible for monitoring site conditions, ensuring compliance with environmental

permits, and ensuring that identified restoration and impact mitigation measures are timely, appropriate, and effective. The EA added that Tennessee would also conduct environmental training in advance of construction for personnel involved with construction. The Commission finds that no additional environmental inspectors are necessary.

D. Filing of Mitigation Plans

42. In its comments on the EA, Tennessee recommended changing the wording of the EA's recommended environmental condition 11 requiring Tennessee to complete certain activities ensuring the Commission's compliance with section 106 of the National Historic Preservation Act (NHPA).¹³ Tennessee asked to change part (f) of this condition to read "FERC-required mitigation plans" instead of "required mitigation plans." By this change, Tennessee is requesting that we limit the mitigation plans to those required by the Commission. However, the condition as presented in the EA takes into account cultural resources mitigation plans that could be required by other parties, including the State Historic Preservation Officer (SHPO). The Commission finds that requiring Tennessee to file all required mitigation plans will satisfy the Commission's obligations under the NHPA. Further, the Commission observes that part (g) of this condition requires the Director of OEP to review and approve all reports and plans submitted. Consequently, the recommended condition is included in this order without modification.

E. Conclusion of Environmental Review

43. The project involves replacement of pipe entirely within the same ditch as the existing pipeline. We find environmental impacts will be minimal. Based on the discussion in the EA, we conclude that the concerns raised in comments have been adequately addressed and, moreover, that if constructed in accordance with Tennessee's application and the environment conditions set forth in the appendix to this order, approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.

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

¹³ 16 U.S.C. § 470 *et seq.* (2006).

local laws, may prohibit or unreasonably delay the construction and replacement of facilities approved by this Commission.¹⁴

V. Conclusion

45. The purpose of Tennessee's Fitchburg Project is to provide natural gas transportation service for MassDevelopment to meet the energy needs of the Devens development. For the reasons discussed above, the Commission finds that the benefits of the project will outweigh any potential adverse effects, that the proposed project is consistent with the Commission's Certificate Policy Statement on new facilities, and that the proposed new facilities are required and permitted by the public convenience and necessity. The Commission further finds that, absent a significant change in material circumstances, the costs associated with the project will qualify for rolled-in rate treatment when Tennessee makes a future NGA section 4 filing to recover these costs.

46. 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 authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee to construct and operate the facilities, as described more fully in the application and in the body of this order.

(B) Permission for and approval of Tennessee's abandonment of facilities, as more fully described in this order and in the application, are granted.

(C) When Tennessee files under section 4 of the NGA to recover the costs of the Fitchburg Project as authorized by the certificate granted herein, there shall be a presumption of rolled-in rate treatment for such costs, absent a significant change in circumstances.

(D) Tennessee's proposal to use its maximum recourse rates under Rate Schedule FT-A as its initial rates for services using the expansion capacity is approved.

(E) Prior to commencing construction, Tennessee shall execute final service agreement(s) for firm service equivalent to the level of service represented in its

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) and 59 FERC ¶ 61,094 (1992).

precedent agreement. Tennessee is directed to file its negotiated rate agreement with MassDevelopment or a tariff sheet describing the transaction no sooner than 60 days and no later than 30 days before service commences.

(F) Construction of the proposed facilities will be completed and the facilities will be made available for service within one year from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(G) The certificate issued in Ordering Paragraph (A) above is conditioned on Tennessee's compliance with the environmental conditions set forth in the appendix to this order.

(H) Tennessee 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 Tennessee. Tennessee shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

Environmental Conditions
Tennessee Gas Pipeline Company
Fitchburg Lateral Replacement Project
Docket No. CP08-63-000

As recommended in the EA, the certificate authorization granted by this Order is subject to the following conditions:

1. Tennessee shall follow the construction procedures and mitigation measures described in its application and supplements including responses to staff data requests and as identified in the EA, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to 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.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that will 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 will be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Tennessee shall file updated status reports prepared by the head environmental inspector with the Secretary on a *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 each 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 environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and copies of any correspondence received by Tennessee from other federal, state or local permitting agencies concerning instances of noncompliance, and Tennessee's response.

7. Tennessee shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Tennessee shall mail the complaint procedures to each landowner whose property will be crossed by the project.
 - a. In its letter to affected landowners, Tennessee shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they should call Tennessee'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 Tennessee's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.

- b. In addition, Tennessee shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property;
 - (3) the description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
8. Tennessee shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
9. Tennessee 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 facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed/installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented,

if not previously identified in filed status reports, and the reason for noncompliance.

11. Tennessee shall defer construction and use of facilities and staging, storage, and temporary work areas, and new or to-be-improved access roads **until**:
 - a. Tennessee files the Massachusetts SHPO's comments on the architectural report;
 - b. Tennessee provides the SHPO with the additional information for the potentially eligible residence on Pleasant Street, and files any resulting SHPO comments;
 - c. Tennessee files any comments from the Lunenburg Historical Commission on Tennessee's April 29 and May 6, 2008 correspondence;
 - d. Tennessee files any additional information requested by the SHPO and/or the Lunenburg Historical Commission, and any resulting comments;
 - e. Tennessee files the Framingham Historical Commission's comments;
 - f. Tennessee files any required mitigation plan(s) and the SHPO's comments on the plan(s); and
 - g. the Director of OEP reviews and approves all reports and plans and notifies Tennessee in writing that it may proceed.

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