

130 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP09-417-000

ORDER ISSUING CERTIFICATE

(Issued January 8, 2010)

1. On May 22, 2009, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to acquire and convert to natural gas use a 5.41-mile, 14-inch diameter petroleum pipeline, and to construct and operate 0.83 miles of twenty-inch pipeline to provide an interconnection between Transco's Mainline A in Essex County, New Jersey and the Bayonne Energy Center, LLC (Bayonne Plant), a proposed electric power generating plant to be located in Hudson County, New Jersey. The Commission will issue the requested certificate, subject to conditions.

I. Background and Proposal

2. Transco is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce. Transco's transmission system extends from its principal sources of supply in Texas, Louisiana, Mississippi and Alabama and the offshore Gulf of Mexico area, through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey, to its termini in the New York City Metropolitan area.

3. Transco proposes to acquire from Hess Corporation (Hess) for a nominal cost an existing 5.41-mile, 14-inch diameter idle petroleum products pipeline, which it will convert to natural gas use, and to construct and operate a new 0.83-mile, 20-inch diameter pipeline to connect Transco's Mainline A to the converted pipeline (collectively, the Bayonne Lateral). The Bayonne Lateral will be located in Essex and Hudson Counties, New Jersey.

4. In connection with the pipeline conversion, Transco explains that it will perform digs at 13 locations along the existing petroleum products line where smart pigging has identified potential anomalies in pipeline integrity and will replace segments of the

pipeline as necessary. In addition, Transco proposes to install a new pig launcher at the beginning of the converted pipeline and a new receiver at the end of the converted line, to remove existing valves and minor appurtenant facilities on the line, to hydrostatically test the line, and to perform any environmental remediation dictated by the environmental studies associated with the project.

5. With regard to the construction of the new 0.83 miles of pipeline, Transco states it will install a new pig launcher at the beginning of the pipeline and a pig receiver at the end of it. Transco also proposes to construct a new delivery meter station at the point of interconnection between the Bayonne Lateral and the Bayonne Plant. The meter station will consist of two 10-inch ultrasonic meters, one 3-inch rotary meter, 12-inch yard piping, a filter separator, flow control, a chromatograph and communication equipment. Transco will also construct 0.04 miles of new 14-inch pipeline to connect the meter station with the existing 14-inch pipeline to be acquired from Hess. The total project cost of the project is estimated to be \$17,246,375.00.

6. Transco held an open season from January 7 through January 26, 2009, for the 250,000 decatherms per day (Dth/d) of firm transportation capacity that will be available on the Bayonne Lateral. The Bayonne Plant and Hess were the only shippers submitting requests for service in accordance with the terms of the open season. Transco will provide a total of 250,000 Dth/d of incremental firm transportation service over the Bayonne Lateral for the two shippers under Transco's Rate Schedule FDLS.¹ Rate Schedule FDLS permits separate incremental rates for service over various laterals on Transco's system to be established. Transco notes that Hess has subscribed to 125,000 Dth/d of service at incremental rates from the point of interconnection of Transco's Mainline A with the Bayonne Lateral to a point of delivery at the interconnection between the new 0.83 miles of 20-inch diameter pipeline and the 14-inch converted pipeline. The Bayonne Plant has also subscribed for 125,000 Dth/d of service at incremental rates. Service to the Bayonne Plant will also begin at the head of the Bayonne Lateral, but will continue through the Bayonne Lateral to its termination point at the Bayonne Plant.

¹ At the time Transco filed its application, the proceeding on its proposed new Rate Schedules FDLS and IDLS was pending before the Commission in Docket No. RP09-558. On June 26, 2009, the Commission accepted and suspended Transco's tariff filing proposing the new rate schedule and required Transco to clarify certain aspects of its Rate Schedule FDLS proposal (*see Transcontinental Gas Pipe Line Co, LLC*, 127 FERC ¶ 61,297 (2009) (June 26 Order)). On November 6, 2009, the Commission issued an order on Transco's compliance filing accepting Transco's clarifications and ending the suspension period. The order also required Transco to further clarify one issue and file a tariff sheet reflecting the clarification (*see Transcontinental Gas Pipe Line Co.*, 129 FERC ¶ 61,112 (2009) (November 6 Order)). The rate section of this order addresses issues raised in that proceeding that are relevant here.

7. Transco states that the precedent agreements require that the Bayonne Plant and Hess individually execute firm transportation service agreements with Transco under Transco's Rate Schedule FDLS within 15 days after receipt and acceptance of Commission authorizations, for terms of 20 years and 10 years, respectively. According to Transco, the shippers will be responsible for contracting directly with suppliers of natural gas and arranging for the deliveries of gas supplies to the point of interconnection between Mainline A and the Bayonne Lateral.

II. Interventions

8. Notice of Transco's application was published in the *Federal Register* on June 11, 2009 (74 Fed. Reg. 27785). Eight unopposed motions to intervene were filed.² The North Carolina Utilities Commission (NC Commission) and the New Jersey Board of Public Utilities filed timely notices of intervention. Philadelphia Gas Works (Philadelphia Gas), a timely intervenor, filed a limited protest. National Fuel Gas Distribution and New Jersey Division of Rate Counsel (NJ Rate Counsel) filed motions to intervene out-of-time. Both demonstrated an interest in this proceeding and their late intervention will not delay or otherwise prejudice the proceeding. Therefore, for good cause shown, we will grant these motions. NJ Rate Counsel in its motion to intervene and the NC Commission in its notice of intervention included adverse comments on rate aspects of the project. As discussed below, some of these parties comments were addressed in either or both of the June 26, 2009 and November 6, 2009 orders in Docket No. RP09-558 regarding Rate Schedules FDLS and IDLS.

9. On July 14, 2009, Transco filed an answer to protests and comments, and on July 16, 2009, the Bayonne Plant filed an answer to the protest. The Commission's regulations do not permit answers to protests;³ however, the Commission may waive its procedural rules to accept such answers when doing so will not unduly delay the proceeding or prejudice any party, and the answer will clarify the issues and assist the Commission in its decision making.⁴ We find that Transco's and the Bayonne Plant's

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(d) (2009). Timely motions to intervene were filed by the Bayonne Plant, Consolidated Edison Company of New York, Inc., Hess, National Grid Gas Delivery Companies, New Jersey Natural Gas Company, PECO Energy Company, Philadelphia Gas Works, and PSEG Energy Resources & Trade LLC.

³ 18 C.F.R. §213(a)(2)(2009).

⁴ See, e.g., *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032, at P 3 n.3 (2008).

answers provide information that will assist the Commission in its decision making; therefore, we will accept these filings.

III. Discussion

10. Since Transco's proposed facilities will be used to transport natural gas in interstate commerce, they are subject to the requirements of sections 7(c) of the NGA, and the Commission's jurisdiction.⁵

A. Application of the Certificate Policy Statement

11. On September 15, 1999, the Commission issued a policy statement which provides guidance as to how the Commission will evaluate proposals for certificating new construction.⁶ 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 explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to support the project financially without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, 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, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

⁵ 15 USC § 717f (2000).

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying policy*, 90 FERC ¶ 61,128 (2000), *order clarifying policy*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

13. As noted above, Transco proposes to recover the costs of construction (net of reimbursed plant costs), operation and maintenance of the Bayonne Lateral through an incremental rate for the service over the lateral. Accordingly, existing shippers will not subsidize the project. In addition, we find the proposed service will not otherwise adversely affect existing customers since their service will not be degraded by the construction and operation of the new lateral. The project will provide access to a new market for gas. There will be no adverse impact on existing pipelines in the market or their captive customers because the proposal is for service to new natural gas customers and will not replace loads currently transported by the captive customers of other existing pipelines.

14. Regarding impacts on landowners and communities along the route of the pipeline, we note that the Bayonne Lateral will be located on previously disturbed, commercial/industrial land and will parallel railroad facilities owned by Conrail Consolidated Rail Corporation for almost the entire length of the lateral. Transco states that no new permanent right-of-way will be acquired for this project and that it is working cooperatively with landowners to negotiate mutually agreeable license/easement agreements. Additionally, no adverse comments were filed by any landowners. Therefore, the Commission finds that Transco has minimized effects on landowners and surrounding communities.

15. Based on the benefits Transco's proposal will provide to the project shippers, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities along the route, the Commission finds that Transco's proposed Bayonne Lateral is consistent with the Certificate Policy Statement and required by the public convenience and necessity, as conditioned in this order.

B. Rate Proposal

16. Transco proposes to recover the costs of the Bayonne Lateral through an incremental rate under Rate Schedule FDLS. Rate Schedule FDLS, which Transco submitted for approval in a separate NGA section 4 proceeding in Docket No. RP09-558-000, provides for firm transportation service under separate rates established for individual delivery laterals.⁷ Interruptible service over the Bayonne Lateral will be provided under Rate Schedule IDLS.

17. Transco estimates the total cost of construction of the project will be \$17,246,375, but states that the capital costs will be reimbursed in advance by the Bayonne Plant. Therefore, Transco proposes incremental recourse rates for each segment of the Bayonne

⁷ See *supra*, note 1.

Lateral under Rate Schedule FDLS which are designed to recover the estimated operation and maintenance expenses (O&M) and administrative and general expenses (A&G), and reflect a straight fixed-variable method of rate design. No plant costs will be recovered through the proposed rates. Hess and the Bayonne Plant will pay the daily maximum reservation and commodity rates and all applicable charges.

18. Transco estimates the total annual cost of O&M and A&G on the Bayonne Lateral will be \$521,801. Transco proposes a maximum recourse firm reservation rate of \$0.00198 per Dth per day (Dth/d) for service between the receipt point with Transco's main line and the converted oil pipeline, based on an estimated total cost of O&M and A&G of \$90,245. The maximum recourse firm reservation for service between the receipt point with Transco's main line and the terminus of the Bayonne Lateral will be \$0.00946 Dth/d, based on an estimated total cost of O&M and A&G of \$431,556.

19. Transco also proposes a usage rate under Rate Schedule IDLS for interruptible service on the Bayonne Lateral of \$.00572, plus applicable surcharges, which is based on the total cost of the service of the Bayonne Lateral and utilizing billing determinants based on a 100 percent load factor of the lateral's capacity. Transco's rate design in this proceeding does not contain projected interruptible service determinants or revenue, nor does Transco propose to credit interruptible revenues to customers paying maximum rates.

20. However, in its tariff filing in Docket No. RP09-558-000, Transco proposed to refund annually 100 percent of the revenues collected under Rate Schedule IDLS for each designated Rate Schedule FDLS lateral, net of variable costs, to the Rate Schedule FDLS shippers, which it maintained was consistent with Commission policy.⁸ In the June 6, 2009 Order in Docket No. RP09-558-000, the Commission stated that the determination of how to handle interruptible revenues associated with a particular lateral should be made in the specific certificate proceeding for each new lateral where new firm and interruptible rates under Rate Schedules FDLS and IDLS are established.⁹ In response to the June 26, 2009 Order, Transco proposed to delete section 8, which provided for revenue crediting, from Rate Schedule IDLS. Thus, we address that issue here.

21. When establishing initial rates, the Commission requires that either a pipeline provide for crediting of all interruptible revenues, net of variable costs, to shippers paying maximum rates or the pipeline allocate volumes and costs to its interruptible service.¹⁰

⁸ See Section 8 of Rate Schedule IDLS and Transco's April 30, 2009 explanation of its tariff filing in Docket No. RP09-558-000.

⁹ June 26, 2009 Order, 127 FERC ¶ 61,297 at P 8.

¹⁰ *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136, at 61,475 (1997).

Since Transco's recourse rates do not reflect the allocation of costs to its interruptible service, the Commission finds that interruptible revenue crediting is the appropriate approach with regard to service under Rate Schedule IDLS on the Bayonne Lateral.

22. The Commission directs Transco to file actual rate tariff sheets no earlier than 60 days and no later than 30 days prior to the in-service date of the Bayonne Lateral, reflecting the approved recourse rates for service on the Bayonne Lateral. Consistent with Commission regulations, pipelines are required to account separately for the construction costs of incrementally priced expansion capacity.¹¹

23. In addition, Transco must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with the Bayonne Lateral in sufficient detail, so that they can be identified in Statements G, I, J, K and other statements in any future NGA section 4 or 5 rate cases.

C. Lost and Unaccounted For Gas Retention

24. Philadelphia Gas filed what it characterizes as a limited protest requesting the Commission to require Transco to amend Rate Schedules FDLS and IDLS to include a provision for retention of lost and unaccounted for (LAUF) gas. Philadelphia Gas notes that in its application Transco stated that since the Bayonne Lateral would have no compression, it would not retain any fuel from the project shippers. Philadelphia Gas filed a similar protest in Docket No. RP09-558-000, the rate proceeding in which Transco sought approval for Rate Schedules FDLS and IDLS. In the June 6, 2009 order in that proceeding, the Commission denied Philadelphia Gas's protest, pointing out that Rate Schedules FDLS and IDLS did contain such a retention provision in sections 3.5 and 3.3, respectively.¹² However, the Commission stated that Transco's initial rate proposal for the Bayonne Lateral should be addressed in this certificate proceeding.

25. We note that section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff addresses fuel retention for both operational purposes, such as compression, and for LAUF, but doesn't break out fuel use and losses separately. In its protest in this proceeding, Philadelphia Gas cites *Columbia Gas Transmission Corporation (Columbia)*,¹³ as support for its contention that Transco must include a fuel retention provision in Rate Schedule FDLS and IDLS. In *Columbia*, the Commission addressed a proposal to construct mainline and lateral line facilities to provide transportation service

¹¹ 18 C.F.R. Part 201 and § 154.309 (2009).

¹² June 26, 2009 Order, 127 FERC ¶ 61,297 at P 11.

¹³ *Columbia*, 99 FERC ¶ 61,190, order on reh'g, 100 FERC ¶ 61,240 (2002).

for a proposed electric generating power plant. Initially, the Commission held that since there was no compression on the lateral, there was no need for fuel retention. In its order on rehearing, however, the Commission clarified that there was no reason why the “principle of cost responsibility . . . should not be applicable to all services rendered” under the lateral line rate schedule.¹⁴ The Commission concluded that, although shippers would have no responsibility for compression fuel, because there was no compression on the lateral line, shippers on the lateral line should be responsible for LAUF on the lateral. Accordingly, Columbia was required to provide a proposal for recovering LAUF from shippers on the lateral when it filed its next annual Retainage Adjustment Mechanism.¹⁵

26. In its July 14, 2009 answer, Transco states that there is no meter to measure gas entering the lateral from the mainline and that the meter station at the terminus of the lateral will provide the sole point of measurement for the gas transported through the lateral. Without measurement at both the start and end of the lateral, Transco maintains it will be unable to calculate any loss of fuel on the line. Also, it notes that if it were required to construct additional measurement facilities, the cost of the project would increase. Further, citing *Columbia Gulf Transmission Co.*¹⁶ (*Columbia Gulf*) Transco argues that initial rates for a new service should be established on a rational basis, i.e., specific to that particular service, and not by simply borrowing a rate from another service and using that rate and its design factors as a proxy for the rate for a new service.¹⁷ It asserts that the unique circumstances of its pipeline system must be taken into consideration when establishing a lateral line rate. Transco points out that its mainline system includes many compressor stations, multiple large interconnections with third parties, numerous storage facilities and a myriad of receipt and delivery meter stations, all located along thousands of miles of pipeline. Thus, Transco argues fuel losses from the mainline facilities are not representative of losses that would be sustained on six miles of new pipeline and, therefore, it should not be required to retain fuel for LAUF in association with service on the lateral line simply because it does so for other services.

27. The Bayonne Plant, in its answer to Philadelphia Gas’s comments, agrees with Transco, and notes that the Bayonne Lateral is located in Transco’s Zone 6 and that the fuel charge to Zone 6 is already more expensive than deliveries to anywhere else on Transco’s system. The Bayonne Plant avers that Transco’s existing fuel retention

¹⁴ *Columbia*, 100 FERC ¶ 61,240 at P 6 n.5.

¹⁵ *Id.* P 6.

¹⁶ *Columbia Gulf Transmission Co.*, 124 FERC ¶ 61,113, (2008).

¹⁷ *Id.* P 27.

mechanism, which will apply to the project shippers' rates for moving gas on the existing system to the interconnection with the new lateral, fully allocates to those shippers Transco's fuel for compression and LAUF for volumes of gas delivered to the receipt point of the Bayonne Lateral. Further, the Bayonne Plant argues that without evidence that the Bayonne Lateral will contribute measurably to additional fuel losses, the charges will be insignificant and not worth the cost of installing an additional metering station.

28. The Commission believes that Philadelphia Gas's protest regarding LAUF has merit. Consistent with *Columbia* cited above, to the extent there is LAUF gas in conjunction with service on the Bayonne Lateral, the project shippers properly should be responsible for such costs.

29. We think that Transco's reliance on *Columbia Gulf* is misplaced. In that case, the Commission found that a new service proposed by Columbia was not really a service, but a means to recover the costs of expanding meters at certain delivery points for existing shippers who wished to use those points, but where there was no current capacity to do so. The Commission indicated that even if it were a service, using the firm transportation rate as a proxy for an initial rate for that service was not supported because the two services were not alike and that using the rate from one service for the initial rate for another must be rational.¹⁸ In this proceeding we are not saying that Transco should necessarily use the same rate to recover LAUF gas on the Bayonne Lateral as it does to recover LAUF gas on its general system. Rather, we are saying that to the extent there is LAUF gas on the Bayonne Lateral, Transco should develop a mechanism for recovering it from the lateral shippers, just as shippers on the existing system are accessed for LAUF gas on those facilities.

30. Transco also states that it cannot determine what the LAUF will be on the lateral because it lacks the appropriate number of meters to specifically measure LAUF. However, the Commission notes that measurement by meter of each shipper's LAUF for the various services offered by Transco is not the method the pipeline currently uses to allocate LAUF to shippers. Rather, under section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff, Transco uses a formula based on system gas use data, adjusting for various factors, to derive retention percentages to allocate retention for its zones on the basis of Dth-miles. Neither fuel use for operations nor LAUF are directly measured within any specific zone. We are not convinced, based on the record before us, that Transco cannot develop a methodology for estimating the amount, if any, of LAUF gas on the Bayonne Lateral.

31. The Commission will require Transco to set the initial maximum recourse Fuel Retention Percentage for service on the Bayonne Lateral to 0.0 percent. As a fuel

¹⁸ *Id.*

retention percentage, this rate is subject to section 38.2 of Transco's General Terms and Conditions. Section 38.2 includes Rate Schedule FDLS, and section 3.5 of Rate Schedule FDLS and section 3.2 of Rate Schedule IDLS are explicit that line-loss will be charged. However, since it appears that Transco's mechanism in section 32 of its tariff combines gas used in operations and LAUF when the retention percentage is computed, we will require Transco to explain how it will determine the appropriate level of retention for LAUF on the Bayonne Lateral, that has no compression, when it makes its first fuel tracking filing after the in-service date of the Bayonne Lateral. The parties and the Commission can examine Transco's proposal at that time. This is consistent with our approach in *Columbia*.¹⁹ The revised tariff sheets reflecting the 0.0 percent Retention Percentage shall be filed no earlier than 60 days and no later than 30 days before the in-service date of the Bayonne Lateral.

D. Applicability of Maximum Hourly Quantity

32. In its July 13, 2009 intervention, NJ Rate Counsel points out that Rate Schedule FDLS applies a daily contract quantity and specified maximum hourly quantity (MHQ) for services. NJ Rate Counsel states that it is unclear whether Transco intends to impose these restrictions on traditional gas customers, presumably meaning existing customers on Transco's system. If so, NJ Rate Counsel is concerned that the MHQs may be unduly burdensome for New Jersey gas utility ratepayers.²⁰

33. In its answer, Transco states that the MHQ limitation in Rate Schedule FDLS is solely a part of the firm transportation service under that rate schedule and will not be imposed upon, or alter in any way, the traditional firm transportation service provided under Rate Schedule FT. Transco explains that section 4.3 of Rate Schedule FDLS defines the meaning of MHQ and the limitation it imposes on Transco's obligation to deliver gas to an FDLS delivery point and on a shipper's right to take gas at that point. Therefore, Transco argues that the agreed upon MHQ limitation will not adversely impact service to Transco's existing shippers.

¹⁹ At the time of that filing, the Commission can consider whether Transco will need to revise section 38 or its tariff and/or the relevant sections of Rate Schedule FDLS and IDLS to reflect any approved methodology.

²⁰ The Commission addressed a number of concerns about the MHQ provisions of Rate Schedule FDLS in the rate proceeding in Docket No. RP09-558-000, but not the specific issue raised by NJ Rate Counsel here. The Commission accepted Transco's clarifications regarding the other MHQ provisions and accepted the proposed rate schedules in its November 6, 2009 Order in the rate proceeding.

34. The Commission accepts Transco's explanation and, therefore, denies the NJ Rate Counsel's protest. Rate Schedule FDLS clearly limits MHQ to contracts falling under that rate schedule.

IV. Environmental Analysis

35. On June 4, 2009, environmental staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Bayonne Lateral and Request for Comments on Environmental Issues (NOI). No comments to the NOI were received. An Environmental Assessment (EA) for the project was placed in the public record in this proceeding on September 28, 2009. Based on the discussions in the EA, the Commission concludes that approval of this project, if it is constructed and operated in accordance with Transco's application and supplements, and the environmental conditions which are set forth in the appendix to this order, would not constitute a major federal action significantly affecting the quality of the human environment.

36. We note that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²¹

V. Conclusion

37. For all of the reasons discussed above, and with the conditions imposed herein, the Commission finds that Transco's proposal is required by the public convenience and necessity and we are issuing the requested certificate.

38. 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 authorizing Transco to construct new pipeline facilities, to convert the former petroleum products

²¹See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 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).

pipeline to natural gas use, and to own and operate these facilities together as the Bayonne Lateral project, as more fully described in the application and in this order.

(B) Transco shall complete the construction and conversion of the respective pipelines and make them available for service within one year of the date of the order, pursuant to section 157.20(b) of the Commission's regulations.

(C) The authorization in Paragraph (A) is conditioned on Transco's compliance with the provisions of all applicable Commission regulations and the NGA, including, but not limited to, sections 157.20 (a), (c), (e), and (f) of our regulations.

(D) The authorization in Ordering Paragraph (A) is conditioned upon Transco's compliance with the environmental mitigation measures set forth in the appendix to this order.

(E) Transco shall notify the Commission's environmental staff by telephone, electronic 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 of the Commission within 24 hours.

(F) Transco shall set the initial maximum recourse Fuel Retention Percentage for service on the Bayonne Lateral to 0.0 percent and, when Transco makes its first fuel tracking filing after the in-service date of the Bayonne Lateral, it must propose how it will estimate and recover costs associated with any LAUF gas over the Bayonne Lateral.

(G) Transco shall file actual rate tariff sheets no earlier than 60 days and no later than 30 days prior to the in-service date of the Bayonne Lateral, reflecting the approved rates for services on the Bayonne Lateral.

(H) Transco must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its incremental service on the Bayonne Lateral in sufficient detail, so that they can be identified in any future NGA section 4 or 5 rate cases.

(I) The motions to intervene out of time and motions to file answers are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

1. Transco 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 this order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Transco Project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction, abandonment, 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, 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. **Within 60 days of the acceptance of this certificate and before construction** begins, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revision to the plan as schedules change. The plan shall identify:

- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this order;
 - b. the training and instructions Transco will give to all personnel involved with construction;
 - c. the number of EIs assigned per spread, and how Transco will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material; and
 - e. provide a Grant or PERT chart (or similar project scheduling diagram) and dates for the start and completion of the project.
5. Transco shall file updated status reports with the Secretary on a **bi-weekly** basis **until all construction, abandonment, and restoration activities are complete**. On request, these status reports shall also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Transco's efforts to obtain the necessary federal authorizations;
 - b. the current construction status of each activity, work planned for the following reporting period;
 - c. 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);
 - d. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
6. Transco must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorizations will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.