

132 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Eastern Shore Natural Gas Company

Docket No. CP10-76-000

ORDER ISSUING CERTIFICATE

(Issued September 3, 2010)

1. On March 5, 2010, Eastern Shore Natural Gas Company (Eastern Shore) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct and operate approximately eight miles of 16-inch-diameter pipeline in Lancaster and Chester Counties, Pennsylvania and a new receipt point interconnection (the Mainline Extension Interconnect Project). For the reasons discussed below, the Commission will authorize Eastern Shore's proposal, subject to appropriate conditions.

I. Background and Proposal

2. Eastern Shore operates an interstate natural gas pipeline system in Pennsylvania, Maryland, and Delaware. Currently, Eastern Shore receives natural gas from two interstate natural gas pipelines at three interconnections. It receives natural gas from Transcontinental Gas Pipe Line Corporation, LLC (Transco) at Parkesburg, Pennsylvania and Hockessin, Delaware, and from Columbia Gas Transmission, LLC (Columbia) near Cochranville, Pennsylvania. Eastern Shore transports and delivers the gas from Transco and Columbia to local distribution companies (LDC), and industrial and electric power generation customers.

3. In its application, Eastern Shore states that in order to meet the needs of its customers in its expanding market area and to ensure that adequate natural gas supplies continue to be available, it proposes to extend its mainline to connect with the interstate pipeline facilities of Texas Eastern Transmission, LP (Texas Eastern), thereby providing its shippers the opportunity to access, through Texas Eastern, natural gas supplies produced in the Appalachian region. Specifically, Eastern Shore proposes to construct and operate approximately eight miles of 16-inch-diameter pipeline extending its Parkesburg Line mainline beginning near Parkesburg, Pennsylvania, northward, to Texas

Eastern's facilities near Honey Brook, Pennsylvania. At Honey Brook, Eastern Shore will also construct a new receipt point interconnection with Texas Eastern, including a tap and metering, regulating, and ancillary facilities.

4. The proposed 8-mile extension line is designed to receive and transport from Texas Eastern up to 50,000 Dth of natural gas per day. However, the proposed project will not increase the capacity or deliverability of Eastern Shore's Parkesburg Line. Rather, Eastern Shore's design day receipts from Texas Eastern will displace equivalent receipts from Transco.¹

5. In order to gauge interest in capacity from an interconnection between Eastern Shore's Parkesburg Line and Texas Eastern's facilities, Eastern Shore conducted an open season between November 2 and November 13, 2009, for service on its Mainline Extension Interconnect Project. As a result of the open season process, Eastern Shore received two binding shipper nominations, one from Chesapeake Utilities Corporation-Delaware Division, and a second from Chesapeake Utilities Corporation-Maryland Division (collectively, Chesapeake LDCs) for a total of 40,000 Dth per day of firm transportation service, to be phased in over a three-year period, from November 1, 2010 to November 1, 2012.² On July 22, 2010, in a supplement to its application, Eastern Shore filed with the Commission its binding precedent agreements with the Chesapeake LDCs.

6. Eastern Shore estimates the cost of the facilities associated with the Mainline Extension Interconnect Project will be \$19,405,974. Eastern Shore's natural gas system is divided into two rate zones for transportation service -- Zone 1, the northern zone, and Zone 2, the southern zone. Eastern Shore proposes to charge its currently effective Zone 1 firm transportation rate under Rate Schedule FT, as an initial section 7 rate for service on the 8-mile extension between the new interconnection with Texas Eastern at Honey Brook and the current northern end of its Zone 1 near Parkesburg.³ Using the currently

¹ Design day receipts from Transco at the Parkesburg-Transco interconnection currently comprise 68.2 percent of Eastern Shore's system supply. With this project, those receipts would be reduced to 42.9 percent of Eastern Shore's design day receipts, with Honey Brook-Texas Eastern picking up the remaining capacity, or 25.3 percent of design day receipts. *See* Application at 8.

² Chesapeake Utilities Corporation (Chesapeake) is the parent company of Eastern Shore. Therefore, as divisions of Chesapeake, the Chesapeake LDCs, existing transportation customers of Eastern Shore, are affiliates of Eastern Shore.

³ Under the Chesapeake LDCs' precedent agreements, the delivery point for service on the extension will be at the point where the 8-mile extension meets the present
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effective Zone 1 reservation rate of \$9.0271/Dth, Eastern Shore projects that the total estimated incremental revenue from service on the extension at the separately charged rate will be \$40.6 million, and the total estimated incremental cost of service for the new facilities will be \$30.6 million. Although the estimated revenues from the project exceed the cost of the project, as discussed in more detail below, Eastern Shore does not seek a predetermination from the Commission that it may roll the costs of the project into its existing rates in a future rate case.

II. Public Notice, Interventions, and Protests

7. Notice of Eastern Shore's application was published in the *Federal Register* on May 4, 2010 (75 Fed. Reg. 23,757). Chesapeake, Delmarva Power & Light Company (Delmarva), Easton Utilities Commission (Easton), the Delaware Public Service Commission (Delaware PSC), and Texas Eastern filed timely, unopposed motions to intervene.⁴ Motions to intervene out-of-time were filed by PECO Energy Company, Honey Brook Township, and the County of Chester Pennsylvania. These parties have demonstrated an interest in this proceeding and granting their late interventions will not delay or disrupt this proceeding or otherwise prejudice other parties. Therefore, the Commission grants these late motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.⁵

8. The Delaware PSC, Delmarva, and Easton filed protests to Eastern Shore's application with their motions to intervene, raising issues regarding, *inter alia*, the adequacy of the application and its supporting documentation, the need for the project, and the proposed rate treatment for the project. Eastern Shore filed an answer to the protests and, in turn, the Delaware PSC filed a motion for leave to answer and limited answer to Eastern Shore's answer. While the Commission's regulations do not permit the filing of answers to protests, or the filing of answers to answers,⁶ the Commission, for good cause, will accept answers providing additional information which may aid in its

northern beginning of Eastern Shore's Zone 1. These shippers will use their capacity under their existing contracts for firm transportation on Eastern Shore's existing facilities. Thus, shippers will pay up to the Zone 1 rate for service over the new extension, plus the Zone 1 rate for service through existing Zone 1, plus the Zone 2 rate for service to their delivery points in Zone 2.

⁴ 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 (2010).

⁵ 18 C.F.R. § 385.214(d) (2010).

⁶ 18 C.F.R. § 385.213 (2010).

decision making process. The Commission finds good cause to do so in this instance and accepts the answers of Eastern Shore and the Delaware PSC in order to ensure a complete record in this proceeding. The issues raised by the protesting parties are discussed below.

III. Sufficiency of Eastern Shore's Application under the Commission's Regulations

9. The Delaware PSC and Delmarva argue that Eastern Shore's application is deficient because it fails to provide all of the information required by Part 157 of the Commission's regulations for a section 7(c) certificate application and thus includes insufficient information for the Commission to fully analyze the impacts of the proposed project or authorize the project.⁷ The protestors argue that the application fails to supply certain specific information required by a number of the provisions of section 157.14 of the regulations. For example, the Delaware PSC asserts that Exhibit D of the application fails to explain in detail Eastern Shore's affiliate relationship with Chesapeake as required by section 157.14(a)(4) and that Exhibit I does not include all of the market data required by section 157.14(a)(11), while both protestors maintain that the Exhibit N cost and revenue analysis required by section 157.14(a)(16) is incomplete and deficient in various respects.⁸

10. The Delaware PSC requests that the Commission either issue a deficiency notice requiring Eastern Shore to file all necessary information in sufficient detail, set the application for hearing or settlement judge procedures through which the parties can obtain additional information, or deny the application on the basis that Eastern Shore has not produced sufficient evidence to demonstrate a need for the project.

11. In its answer, Eastern Shore maintains that its application provides the required information and exhibits in the same manner in which it has submitted such information in previous applications for certificate authorizations. Eastern Shore avers that the information submitted in its Exhibit I satisfies the requirements set forth in the

⁷ See 18 C.F.R. § 157.1 *et seq.* (2010).

⁸ The Delaware PSC also maintains that the application does not meet the general filing requirements of Part 157 that applicants submit detailed and complete responses to the specific informational requirements imposed by Part 157, or justify any omission of data or information. See, *e.g.*, 18 C.F.R. § 157.5 (2010).

Commission's regulations and the Commission's Certificate Policy Statement.⁹ Eastern Shore also states that its Exhibit N is in the same format and provides essentially the same information that it has submitted to support several previous applications for authorization to construct new facilities over the past fourteen years. Eastern Shore adds that it has provided Exhibit N data for the first ten years of operation of the new facilities, even though the Commission's regulations only require such information for the first three years of operation. Further, Eastern Shore states that the additional information which the Delaware PSC suggests must be included in Exhibit D is inappropriate in this proceeding in the absence of any specific allegations of an abuse of the affiliate relationship with respect to this project.

12. The Commission finds that Eastern Shore's application forms a sufficient basis upon which to process Eastern Shore's request for a certificate of public convenience and necessity authorizing its proposed construction project. The information and exhibits Eastern Shore has filed adequately comply with the Commission's regulations in Part 157 and support Eastern Shore's application. As Eastern Shore notes, this is the latest in a series of projects undertaken by Eastern Shore over the past decade to expand and enhance the reliability of its Parkesburg mainline. The information and exhibits filed by Eastern Shore in this case are consistent with those filed for its past expansion projects, which the Commission has accepted as in conformance with our regulations. To the extent additional needed information was missing or unclear from the application, the information was provided pursuant to data requests issued by Commission staff.¹⁰

13. Further, with respect to the market data required by Exhibit I, the Commission's Certificate Policy Statement clarifies that the amount of evidence needed to establish the need for a proposed project will depend on the potential adverse effects of the project and suggests that information traditionally required to be filed in support of applications may no longer be required in an individual case.¹¹ Indeed, since the issuance of the Certificate Policy Statement, the threshold requirement for establishing that a proposed expansion of an existing pipeline is required by the public convenience and necessity is that the

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

¹⁰ For example, as the Delaware PSC noted, the maximum design-day capacity of the proposed mainline extension was not clear from the application. Thus, the Commission staff issued a data request to Eastern Shore to confirm the maximum daily capacity of the expansion line. *See* Eastern Shore's July 2, 2010 Data Response to Commission Staff's June 29, 2010 Data Request.

¹¹ Certificate Policy Statement, 88 FERC at 61,748.

pipeline is prepared to financially support the project without relying on subsidization from its existing customers.¹² Accordingly, it has not been the Commission's practice to reject as deficient an application for failure to include the extensive market data specified in the Commission's regulations and find no reason to do so here.¹³

14. While the protestors complain of informational deficiencies in the application, their concerns appear to be more related to whether Eastern Shore is seeking, or will receive, a predetermination favoring rolled-in rate treatment for the costs of the project. As discussed in more detail below, Eastern Shore does not request, and the Commission is not making a finding supporting rolled-in rate treatment for the project's costs. Nevertheless, the Commission addresses, below, some of the particular deficiencies alleged by the protestors, largely with respect to Exhibit N, in the rate section of this order.

15. Accordingly, the Commission denies the protestors' requests for issuance of a deficiency notice or institution of hearing or settlement judge procedures.

IV. Discussion

16. Since Eastern Shore will use the proposed facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

17. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for new construction and establishes 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

¹² *Id.* at 61,746.

¹³ There is a statement in the Certificate Policy Statement that "the evidence necessary to establish the need for the project will usually include a market study . . . An applicant could rely on generally available studies by EIA or GRI, for example" (Certificate Policy Statement, 88 FERC at 61,748). However, since there is a general consensus, supported by such studies, that the demand for natural gas has continued to increase, the studies are commonly not filed in support of proposed pipeline projects which are also supported by direct evidence of market demand such as precedent agreements.

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.

18. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, 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.

1. Subsidization

19. In its application, Eastern Shore proposes to charge its existing Rate Schedule FT Zone 1 rate as the initial recourse rate for service on the Mainline Extension Interconnect Project, but does not request a predetermination that the costs of the project should be rolled into that rate in a future section 4 rate case. Since none of the proposed project costs are included in Eastern Shore's currently effective rates, accepting Eastern Shore's proposal to charge these rates as initial recourse rates for service on the Mainline Extension Interconnect Project will not result in a subsidization of that service by existing customers. Accordingly, the Commission finds that Eastern Shore's proposal will not result in subsidization by its existing customers and, therefore, satisfies the threshold test of the Certificate Policy Statement.

20. The Delaware PSC raised a concern that Delaware ratepayers could be responsible for costs already incurred by Eastern Shore if the Commission does not authorize the Mainline Extension Interconnect Project, or for abandonment costs if Eastern Shore cancels or abandons the project following Commission authorization.¹⁴ The Delaware

¹⁴ Protest of Delaware PSC at 10. The Delaware PSC cites another Eastern Shore proceeding in which the expansion shippers entered into a settlement agreement to share in pre-certification costs incurred for the Energylink Expansion Project in the event

PSC requests that the Commission condition authorization of the project on Eastern Shore's full responsibility for any costs Eastern Shore incurs developing the project if it is never placed in service. Alternatively, the Delaware PSC requests that the Commission state either that recovery of any such costs will be addressed in a future rate filing, for which the Delaware PSC will be given reasonable notice, or that nothing in its certificate order may be construed as pre-approval for cost recovery if the project is never placed in service.

21. In this order, the Commission is authorizing the proposed project. Thus, the issue of the recovery of pre-certification costs in the event the Commission fails to approve the project is moot. Though such a decision is unlikely, should Eastern Shore nevertheless decide not to go forward with this project, Eastern Shore could only seek to include any costs associated with the project in its rates by filing a proceeding under section 4 of the NGA, where such recovery of the costs would obviously be an issue. Notice of such a proceeding would be provided in accordance with the Commission's procedures. Eastern Shore does acknowledge that the precedent agreements provide for the reimbursement of Eastern Shore's "Pre-Service Costs" if the participating shipper elects to terminate its agreement for service on the project or defaults on its obligations for reasons other than those allowed under the terms and conditions of the precedent agreement. However, Eastern Shore also points out that there is no settlement agreement, as there was for the Energlink Expansion Project, to address pre-service costs and reimbursement under other circumstances that might prevent the project from being constructed or being abandoned before the facilities are completed and placed in service.

22. The Commission will not condition its approval of this project on Eastern Shore's bearing full responsibility for costs should the project not go forward. The Commission encourages pipelines to reach agreement with new shippers in advance regarding how costs will be allocated under various circumstances.¹⁵ To the extent a company has reached such an agreement regarding the circumstance where an approved project does not go forward, the recovery of costs would be governed by the terms of the agreement.

Eastern Shore discontinued development of the project, which ultimately occurred. *See Eastern Shore Natural Gas Co.*, 116 FERC ¶ 61,111 (2006).

¹⁵ *See* Certificate Policy Statement, 88 FERC at 61,747. *See also, e.g., Tractebel Calypso Pipeline, LLC*, 103 FERC ¶ 61,106, at P 35 (2003).

2. Impact on Existing Customers and Existing Pipelines and Their Customers

23. We further find that Eastern Shore's proposed Mainline Extension Interconnect Project will not adversely affect the quality of service of Eastern Shore's existing customers. While protestors Delmarva and Easton, existing customers of Eastern Shore, and the Delaware PSC, which protects the interests of Delaware intrastate ratepayers, raise concerns regarding the project's potential effect on the rates of existing customers,¹⁶ they do not argue that the project will adversely affect the quality of service existing customers receive from Eastern Shore. Rather, Eastern Shore's proposal will enhance the reliability and flexibility of the service all Eastern Shore customers receive. The proposed project will have some impact on one existing pipeline, since Eastern Shore indicates that design day receipts from Transco at its Parkesburg interconnection will be reduced from 134,764 dth per day to 84,772 dth per day, or by approximately 37 percent, and that such capacity will be replaced with an equivalent volume of receipts from Texas Eastern. However, there is no indication the project will affect Transco's market for firm transportation service, or Transco's ability to offer firm transportation service or transport gas. Moreover, neither Transco nor any of its shippers have voiced opposition to or concern over the project's displacement of some of Transco's existing firm transportation service, nor has any other pipeline located in Eastern Shore's market area protested Eastern Shore's application.

3. Impact on Landowners

24. The Commission finds that there should be minimal adverse impact from the project on landowners and the surrounding communities. The project is limited to eight miles of pipeline extension and an interconnection with Texas Eastern's existing facilities. Construction of the project will temporarily affect approximately 126 acres of land. Following construction, Eastern Shore proposes to permanently maintain approximately 51 acres for operation of the project, including a 50-foot-wide permanent right-of-way. Eastern Shore states that it intends to use existing private and public roads as much as possible to access the right-of-way. The pipeline route traverses predominantly rural agricultural land, and Eastern Shore will need to obtain new permanent easements from private landowners. However, Eastern Shore states that it will work diligently with landowners to minimize impacts affecting their ability to farm or landscape their property, construct above-ground facilities on their property, or make other surface use of their land.

¹⁶ The Commission addresses the protestors' specific concerns regarding the project's rate impact on existing customers in more detail below in the rate section of this order.

25. As noted in the environmental section of this order, Jonathan J. Lapp, a landowner filed environmental scoping comments requesting that Eastern Shore be required to: (1) lease the land through which the pipeline crosses, paying landowners \$2.00 per foot of pipeline every year, and the land's assessment value; (2) pay farmers with 100 acres two percent of the value of the gas flowing in the pipeline every month; and (3) compensate landowners for crop loss for five years, and wait until October 1, 2010, to start construction to avoid damage to this year's crops.¹⁷

26. The issues raised by Mr. Lapp are primarily issues regarding the appropriate compensation for the right-of-way easement Eastern Shore will need to acquire from Mr. Lapp. The Commission has no authority here to determine what constitutes just compensation. Landowners are entitled to be monetarily compensated for the value of the land that is taken for the project right-of-way. In most instances, the compensation for the granting of a pipeline easement is determined as a result of negotiations between the pipeline company and the individual landowner, and landowners are free to seek in such negotiations any form and amount of compensation for the easement and any actual or potential losses in property values. If, however, a landowner and pipeline cannot agree on the terms and amount of compensation to be paid for the right of way, section 7(h) of the NGA grants the right of eminent domain to the certificate holder.¹⁸ In an eminent domain proceeding, a state or federal court will require the pipeline to compensate the landowner for the economic value of the right-of-way, as well as for any damages incurred during construction, including crop damage, and determine the appropriate level of compensation. Accordingly, the issues regarding compensation raised by Mr. Lapp are outside the jurisdiction of the Commission.

4. Public Convenience and Necessity

27. As stated above, to determine whether a proposed project is needed and will serve the public interest, the Commission balances the public benefits against adverse consequences. Further, the amount of evidence necessary to establish the need for a project will vary depending on the potential for adverse consequences. Eastern Shore's originally-filed application included as evidence of market support for the project, in Exhibit I, the two shipper nomination forms for firm natural gas transportation service received in the project open season from the Chesapeake LDCs. Subsequently, in its supplement to its application, Eastern Shore filed two binding precedent agreements executed by the Chesapeake LDCs for a total of 40,000 Dth per day of firm transportation

¹⁷ The agricultural issues raised by Mr. Lapp are addressed in the environmental section of this order.

¹⁸ 15 U.S.C. § 717f (2006).

capacity, with initial terms of 17 years. Eastern Shore states that these are long-term, firm service commitments by two longstanding LDC customers of Eastern Shore, which make the project economically feasible without subsidization by other customers of Eastern Shore or captive customers of competing interstate pipelines.

28. The Delaware PSC asserts that Eastern Shore has not met its burden under section 7(c) of the NGA to show that the proposed project is needed or in the public interest because the application fails to provide any studies demonstrating the overall benefit to consumers or adequate market data to support the project, such as that which the Commission's regulations specify be included in Exhibit I. For example, the Delaware PSC states that Eastern Shore has not provided demand projections or data to support its claims that significant near- and long-term market growth requires the mainline extension, or that no cost-effective alternatives to the project exist. The Delaware PSC also suggests that the fact that the two project shippers are affiliates of Eastern Shore makes Eastern Shore's claims of project need and system-wide benefits circumspect and illusory.

29. In its answer, Eastern Shore states that binding firm service commitments from LDC customers are the essential market information which the Commission has consistently required of interstate pipeline applicants since the issuance of the Commission Policy Statement over ten years ago. Eastern Shore contends that its application amply demonstrates market need for the Mainline Extension Interconnect Project, is in full accord with the Certificate Policy Statement, and meets the Commission's regulations.

30. As discussed above, Eastern Shore has met the threshold requirement under the Certificate Policy Statement by proposing a project that does not rely on subsidies from its existing customers. Beyond that, Eastern Shore has entered into 17-year, binding precedent agreements with the Chesapeake LDCs for 80 percent of the capacity of the extension line. Although the Certificate Policy Statement eliminated the traditional requirement that an applicant present contracts to demonstrate need, it nevertheless recognized that "contracts or precedent agreements always will be important evidence of demand for a project."¹⁹ Moreover, even under the pre-Certificate Policy Statement policy, these long-term contracts for a significant portion of the proposed capacity would have been sufficient to establish market support.²⁰

¹⁹ Certificate Policy Statement, 88 FERC at 61,748.

²⁰ "Under the Commission's current certificate policy, an applicant . . . to construct a new pipeline project must show market support through contractual commitments for at least 25 percent of the capacity . . . An applicant showing 10-year firm commitments for

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31. The Delaware PSC suggests the mere fact that the agreements are with affiliates of Eastern Shore somehow raises questions regarding the shippers need for the service. However, the Commission gives equal weight to contacts with affiliates and non-affiliates and does not look behind contracts to determine whether the customer commitments represent genuine growth in market demand.²¹ The Commission has long recognized that a flexible and reliable interstate pipeline grid is essential to ensure ultimate consumers access to diverse supply options.²² The prospective shippers on this project are LDCs with service obligations toward their retail customers. The Commission has found it reasonable for LDCs, such as the Chesapeake LDCs, to seek additional sources of supply, and has emphasized its disinclination to second-guess reasoned business decisions by pipelines' customers evidenced by precedent agreements, as well as binding contracts.²³ The Delaware PSC has presented no evidence of any impropriety or abuse in connection with the agreements. The mere fact that the two local distribution companies are affiliates of Eastern Shore does not call into question their need for new capacity or their obligation to pay for it, or otherwise diminish the showing of market support.

32. Although Eastern Shore was not required to have precedent agreements, the Certificate Policy Statement requires that it file precedent agreements that it has entered into.²⁴ Further, consistent with its usual practice, the Commission will require that Eastern Shore execute contracts equal to the capacity to which the customers have

all of its capacity, and/or that revenues will exceed costs, is eligible to receive a traditional certificate of public convenience and necessity." *Id.* at 61,743.

²¹ *Id.* at 61,744. *See also, Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257 at P 34 (2006); *NE Hub Partners, L.P.*, 90 FERC ¶ 61,142, at 61,439 (2000).

²² *Rockies Express Pipeline LLC*, 121 FERC ¶ 61,130, at P 37 (2007); *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 39 (2006); *Iroquois Gas Transmission Systems, L.P.*, 95 FERC ¶ 61,335, at 62,203 (2001); *Maritimes & Northeast Pipeline, LLC*, 95 FERC ¶ 61,077, at 61,229 (2001).

²³ *See Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,277, at P 201 (2002). *See also, Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, at P 42 (2006); *Southern Natural Gas Co.*, 76 FERC ¶ 61,122, at 61,635 (1996), *order issuing certificate and denying reh'g*, 79 FERC ¶ 61,280 (1997), *order amending certificate and denying stay and reh'g*, 85 FERC ¶ 61,134 (1998), *aff'd Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960 (D.C. Cir. 2000).

²⁴ Certificate Policy Statement, 88 FERC at 61,748.

committed themselves in the precedent agreements prior to beginning construction under any authorization granted in this proceeding.²⁵

33. The Delaware PSC and Delmarva argue that Eastern Shore's expansion project will benefit only the two affiliated shippers, providing no meaningful benefits to Eastern Shore's other shippers. However, the project will provide all Eastern Shore shippers the opportunity to access new supplies. There is currently a potential 10,000 Dth per day of unsubscribed capacity available on the project.²⁶ Increments of the subscribed capacity may be available to other shippers on an interruptible basis or through capacity release. In any event, we find that the benefits which the project will provide to the Chesapeake LDCs (as evidenced by their execution of binding precedent agreements) and their customers, balanced against the lack of any identified significant adverse effects on Eastern Shore's existing customers, other existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline, justify a finding by the Commission that the proposed Mainline Extension Interconnect Project is required by the public convenience and necessity.

34. The Commission will deny the Delaware PSC's requests for a deficiency notice, technical conference, settlement conference, and evidentiary hearing because no party has raised an issue that cannot be resolved on the basis of the existing record, including the application and supplements, in this proceeding.

35. Based on all the above, the Commission finds that the proposal will serve a demonstrated market need and provide a new regional supply source without adverse impacts on existing customers, other pipelines, landowners, or communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of the Mainline Extension Project is required by the public convenience and necessity, subject to the conditions, discussed below.

²⁵ See, e.g., *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,100 (2008); *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,311, at P 27 (2002); *Independence Pipeline Co.*, 92 FERC ¶ 61,268, at 61,891 (2000); *Tennessee Gas Pipeline Co.*, 89 FERC ¶ 61,129, at 61,362 (1999).

²⁶ Eastern Shore states that it cannot ensure firm service on a daily basis beyond the 40,000 Dth/d under current conditions, but appears to indicate that certain design, system, or contractual modifications could make that possible. See Eastern Shore's July 2, 2010 Data Response (see related discussion in the engineering section below).

B. Rates**1. Initial Recourse Rate**

36. As stated previously, Eastern Shore's natural gas system is divided into two rate zones for transportation service -- Zone 1, the northern zone, and Zone 2, the southern zone. Eastern Shore is proposing to charge its currently effective Zone 1 firm transportation monthly rate of \$9.0271/Dth under Rate Schedule FT as the initial recourse rate for service over the eight miles of mainline extension.

37. The Commission will authorize Eastern Shore to use its existing Part 284 maximum Rate Schedule FT Zone 1 monthly rate of \$9.0271/Dth as a separate, initial recourse rate for the services using the incremental capacity created by this project.²⁷ Calculation of an incremental recourse rate for the project would result in a monthly rate of \$5.9911/Dth,²⁸ which would be less than what Eastern Shore is proposing to charge \$9.0271/Dth. Thus, Eastern Shore's proposed rate for service on the extension, which has been agreed to by the Chesapeake LDCs, will recover the project's costs.

38. Delmarva argues that Eastern Shore should charge an incremental rate for service on its mainline extension instead, and is concerned that the Zone 1 rate provides favorable rate treatment to affiliates. However, these concerns seem to be based on a misconception that service for the Chesapeake LDCs from the new interconnection with Texas Eastern over the eight-mile extension would be provided under the Zone 1 reservation charge that these shippers are already paying. As explained in the application, supported by the precedent agreements, and set forth above, the Chesapeake LDCs have agreed to pay a separate charge for service over the eight-mile extension in order to gain access to supplies from Texas Eastern's system. Therefore, the Chesapeake LDCs would pay up to the Zone 1 rate for service on the extension, plus the Zone 1 rate for service through the existing Zone 1 facilities, plus the Zone 2 rate for service to their delivery points in Zone 2. Thus, they will be paying a Zone 1 rate twice, plus the Zone 2

²⁷ Although the Chesapeake LDCs have agreed to pay a separate rate for service on the extension, Eastern Shore has not proposed a separate incremental rate under a new rate schedule for service on the lateral. Thus, other shippers with contracts for Zone 1 capacity will be able to use any available capacity on the new extension with the new Texas Eastern interconnect as a receipt point without paying an additional charge.

²⁸ Using the project's potential maximum capacity of 50,000 Dth/d, we have calculated the resultant incremental rate as follows: cost of service of \$3,594,707/[50,000 Dth/d x 12] = \$5.9911/Dth.

rate for deliveries in their market areas. In view of these clarifications, the Commission will deny Delmarva's protest.

2. Concerns Regarding Rolled-In Rate Treatment

39. Delmarva and Easton are concerned that Eastern Shore is seeking a preliminary determination that the proposed project qualifies for rolled-in rate treatment. Delmarva maintains that rolling in the costs associated with the expansion project will significantly increase the transportation costs to Delmarva and other Zone 1, as well as Zone 2, shippers, while only benefitting Eastern Shore's affiliates. Delmarva and Easton request that if the Commission authorizes Eastern Shore to construct and operate the proposed project, it be explicit that it is not making a determination favoring rolled-in rate treatment for costs of the expansion project in a future rate case.

40. Easton explains that although Exhibit N of Eastern Shore's application reflects that the incremental revenue associated with the project will exceed the project's estimated incremental cost of service in total for the first ten years the project is in service, the exhibit also shows that in the first year of service (November 2010 through October 2011) there will be an underrecovery of more than \$1.4 million and that for the second year there will be an over-recovery of merely \$337,443.²⁹ Easton asserts that this is significant because, pursuant to the settlement agreement reached in its last general rate case, Eastern Shore is obligated to file a new general rate case, with proposed rates to be effective February 1, 2011.³⁰ Easton states that this means that the test period for the upcoming rate case will likely include the project costs and revenues for the first year of service, when Eastern Shore expects to experience a significant revenue shortfall.³¹ Easton points out that under nearly identical circumstances, the Commission rejected a request for a rolled-in rate treatment predetermination for a previous Eastern Shore expansion project.³²

²⁹ As noted above, the targeted in-service date for the Project is November 1, 2010.

³⁰ *Eastern Shore Natural Gas Co.*, 122 FERC ¶ 61,076, at P 3 (2008). The settlement requires Eastern Shore to make a general rate filing with rates proposed to be effective on the third anniversary of the first day of the month following the month in which the settlement is approved by the Commission. *Id.* Since the order approving the settlement was issued January 31, 2008, the proposed effective date of the new rates will be February 1, 2011.

³¹ 18 C.F.R. § 154.303 (2010).

³² *Eastern Shore Natural Gas Co.*, 111 FERC ¶ 61,479 (2005).

41. Conversely, the Delaware PSC explicitly requests that any approval of the project “be conditioned on the roll-in to existing rates of the costs of and revenues from the project.”³³ The Delaware PSC argues that if at some point Eastern Shore files for a rate adjustment related to or including the project, the costs should not be assigned to only the Chesapeake LDCs, but should be rolled in with all other system costs to produce system-wide rates. The Delaware PSC states that “customers taking capacity on the extension should not be required to pay an all-in rate that exceeds the applicable (i.e., Zone 1 or Zone 2) rolled-in rate of all [Eastern Shore] facilities.”³⁴ The Delaware PSC further maintains that rolled-in rate treatment is easily justified given the system-wide benefits described in the application.

42. In its answer, Eastern Shore states that it has not requested a predetermination in favor of rolled-in rate treatment, implicitly or otherwise, in its application. Eastern Shore asserts that its discussion of the project’s revenues exceeding costs over a 10-year period was merely intended to reiterate the facts shown in its Exhibit N analysis for purposes of demonstrating that non-participating shippers will not subsidize the project. Eastern Shore states that it is well aware that at the time of its next rate case filing, only the first year of the phased-in service requirements will be in effect, and is fully cognizant of its burden to provide the necessary evidence that there will be no subsidization of this project by existing customers should it elect to seek rolled-in rate treatment of the project’s costs in a future rate case. Hence, Eastern Shore submits that the question of rolled-in rate treatment is premature at this juncture.

43. Eastern Shore has clarified that it is not requesting that the Commission grant a predetermination that it may roll the costs of the project into its existing rates in a future rate case. The Commission will deny the Delaware PSC’s request that its approval of the project be conditioned on a presumption of rolled-in rate treatment in a future rate case. Eastern Shore’s Exhibit N indicates that a predetermination in favor of rolled-in rate treatment would not be appropriate at this time. The fact that the first year of service, in which Eastern Shore will experience an underrecovery of its costs, will fall within the test period of an NGA section 4 rate case that Eastern Shore is required to file by settlement is significant. As Easton indicates, Eastern Shore’s rates would then be designed to recover that shortfall, potentially resulting in an overrecovery of Eastern Shore’s project costs each year thereafter. In the prior Eastern Shore expansion project cited by Easton, where the facts were parallel to those in this case, the Commission explained its refusal to grant a rolled-in rate treatment predetermination as follows:

³³ Protest of Delaware PSC at 12.

³⁴ *Id.*

Eastern Shore's Exhibit N does, in fact reflect that for the ten-year projection period as a whole, revenues will exceed total costs using existing approved rates. However, Eastern Shore is required by the provisions of its settlement in Docket No. RP02-34-000, to make a section 4 general rate filing with a proposed effective date of November 1, 2006. In accordance with section 154.303 of the Commission's regulations, the section 4 filing would require Eastern Shore to use for its base and test period, data that would encompass the time frame for Years three and four of the project as shown in Exhibit N. During this time period, as shown in Eastern Shore's Exhibit N, costs would exceed projected revenues. Thus, use of the costs and revenues of this time period to derive rates in the rate case could result in existing shippers subsidizing the cost of the subject project. Consequently, we are denying Eastern Shore's request for a predetermination for roll-in treatment.³⁵

44. The Commission reaches a similar conclusion here. However, while the Commission in this case is not granting a predetermination to create a presumption that the costs of this expansion project should be rolled into Eastern Shore's system-wide rates, which is consistent with the Commission's ruling in Eastern Shore's prior expansion case quoted above, neither Eastern Shore nor its customers are precluded from demonstrating in a future rate case that the facility costs should be rolled into system-wide rates because rolled-in rate treatment would lower system rates generally.

45. Eastern Shore will be required to keep separate books and records for the Mainline Extension Interconnect Project. To ensure that all parties have full knowledge of the costs and benefits attributable to the project, Eastern Shore is required to maintain an accounting of the costs and revenues associated with the expansion project in accordance with section 154.309 of the Commission's regulations³⁶ and consistent with Order No. 710 on incremental facilities.³⁷ This accounting includes the formulae and bases used in

³⁵ *Eastern Shore Natural Gas Co.*, 111 FERC ¶ 61,479 at P 22 (footnote omitted).

³⁶ 18 C.F.R. § 154.309 (2010).

³⁷ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008), stated, in regard to incremental facilities, that pipelines were required to:

report the following: (1) the name of the facility; (2) the docket number under which the facility was approved; (3) the type of rate treatment (e.g., incremental or another rate treatment); (4) the amount of plant in service; (5) the amount of accumulated depreciation; (6) the amount of accumulated

(continued)

the allocation of common costs to the expansion project. This requirement will ensure that the costs and revenues associated with project can be identified and challenged, if necessary, in any future NGA section 4 or 5 rate proceedings.³⁸

3. Information Regarding Impact on System-wide Costs and Revenues Required by Exhibits N and P

46. The Delaware PSC asserts the section 157.14(a)(16) of the Commission's regulations requires the filing in Exhibit N of system-wide statements reflecting numerous data when "the estimated revenues and expenses related to a proposed facility will significantly affect the operating revenues or operating expenses of an applicant...."³⁹ The Delaware PSC states that Eastern Shore's Exhibit N purports to show incremental costs and revenues of the proposed project, but does not state whether the project's revenues or expenses will significantly affect its existing revenues or expenses. It maintains that Eastern Shore must either provide the data in section 157.14(a)(16)(i) and (ii), if there will be a significant impact on existing revenues or expenses, or, if not, the statement required by section 157.14(a)(16)(iii) showing in sufficient detail the effect on the operating revenues and expenses of the estimated project revenues and expenses. Similarly, the Delaware PSC asserts that while Eastern Shore states in its Exhibit P that "it does not propose changes to any of its transportation rates," Eastern Shore does not address whether "the proposed facilities will result in a material change in applicant's average cost of service," as required by section 157.14(a)(18) of the Commission's regulations.⁴⁰ The Delaware PSC argues that if there will be a material change, Eastern Shore must provide the required data.

deferred income taxes; (7) amount of operating expenses; (8) the amount of maintenance expenses; (9) the amount of depreciation expense; (10) incremental revenues; and (11) other expenses.

³⁸ In its protest, Delmarva requests that the Commission require Eastern Shore, in the context of its next general rate case filing, to provide detailed information regarding the actual costs of the expansion project to enable a determination to be made of the accuracy of Eastern Shore's initial construction cost estimates, which were based on historical information. As Eastern Shore points out, section 157.20(c)(3) of the Commission's regulations already requires Eastern Shore to file details regarding its actual incurred construction costs within six months after the project facilities have been constructed.

³⁹ 18 C.F.R. § 157.14(a)(16) (2010).

⁴⁰ 18 C.F.R. § 157.14(a)(18)(iii) (2010).

47. In its answer, Eastern Shore confirms that although the cost and revenues associated with the project facilities are significant and, thus, warrant submission of the Exhibit N data to demonstrate there will be no subsidies by non-participating customers, the costs and revenues of the proposed project will not significantly affect its system-wide costs and revenues determined in its most recent rate case in Docket No. RP07-38-000,⁴¹ and will not result in a material change in its average cost of service established in that case.

48. Given Eastern Shore's explanation in its answer, the Commission finds sufficient Eastern Shore's information provided in Exhibits N and P regarding the project's impact on system-wide revenues, expenses, and cost of service. The Delaware PSC, however, further argues that Eastern Shore's indication that the project will not significantly affect system-wide costs and revenues is inconsistent with its statement in its answer that "after the first full year of service, the [p]roject's incremental revenues exceed the [p]roject's incremental costs and, all else being equal, would argu[ably] lower Zone 1 and Zone 2 rates, in the event of a future roll-in,"⁴² The Commission finds no inconsistency, given that Eastern Shore has not requested, and the Commission is not approving, a predetermination of rolled-in rate treatment.

4. Reasonableness of O&M and Other Taxes Cost Estimates

49. Delmarva states that Eastern Shore's analysis in Exhibit N is predicated on expenses for operations and maintenance (O&M) estimated at 1.92 percent of new Gas Plant in Service, and for Taxes Other Than Income estimated at 0.93 percent of new Gas Plant in Service.⁴³ Delmarva states that Eastern Shore provided no workpapers that show how these amounts were derived and whether they are reasonable estimates. Delmarva also questions the reasonableness of Eastern Shore's presumption that the O&M and tax levels attributable to the project will remain constant for the next ten years of operation.

50. In its answer, Eastern Shore states that it has projected its O&M and Other Taxes costs based on actual costs experienced on its system. Eastern Shore states that the costs are based on a three year average of actual costs incurred as compared to gas transmission plant in service for the same period. Further, Eastern Shore asserts that it has not attempted to escalate such costs on an annual basis. Eastern Shore maintains that this is entirely consistent with many Exhibit N analyses in the numerous section 7(c)

⁴¹ See *Eastern Shore Natural Gas Co.*, 122 FERC ¶ 61,076 (2008).

⁴² See Limited Answer of Delaware PSC at 4 (citing Answer of Eastern Shore at 14).

⁴³ See Exhibit N of Application at Schedule 1, Page 1, n.3 and 4.

certificate applications which Eastern Shore has examined. Eastern Shore believes its methodology is reasonable and compatible with the manner in which Commission staff reviews Exhibit N data. Moreover, Eastern Shore states that Delmarva participated in Eastern Shore's last two expansions in Docket Nos. CP03-80-000 and CP06-53-000,⁴⁴ and the methodology used for O&M and Other Taxes was the same as it is in the instant application.

51. The Commission finds that Eastern Shore's use of a three-year average in this case to develop O&M and Other Taxes expense is both reasonable and consistent with the manner in which such information is filed in other applications. Accordingly, the Commission denies Delmarva's protest on this issue.

5. Information on Fuel Costs

52. Delmarva asserts that Eastern Shore's Exhibit N did not include "an analysis of fuel costs associated with the additional throughput on Eastern Shore's system that would result from the [project]."⁴⁵ Delmarva maintains that Eastern Shore's omission is inconsistent with Commission precedent.⁴⁶

53. Eastern Shore responds that there will be no increase in throughput on Eastern Shore's system as a result of the project because there is no increase in overall system deliverability associated with the project. Eastern Shore states that the Texas Eastern gas supplies to which the project provides access displaces, on a one-for-one basis, supplies that would otherwise be received from Transco and/or Columbia. Eastern Shore states that the Texas Eastern supplies will enter Eastern Shore's system eight miles upstream of the existing Parkesburg interconnect with Transco, and that there are no new compression facilities on this new eight-mile extension. Eastern Shore further states that compressor usage will not be affected by whether the supply is brought onto the system using Transco at the Parkesburg interconnect, or using Texas Eastern via this project. Therefore, Eastern Shore asserts that no additional fuel quantities are required by the project.

⁴⁴ See *Eastern Shore Natural Gas Co.*, 105 FERC ¶ 61,049 (2003), *order amending certificate*, 111 FERC ¶ 61,479 (2005); *Eastern Shore Natural Gas Co.*, 115 FERC ¶ 61,311 (2006), respectively.

⁴⁵ Motion to Intervene and Protest of Delmarva at 4.

⁴⁶ Delmarva cites *Northern Border Pipeline Co.*, 112 FERC ¶ 61,196, at P 22 (2005) (citing to *Southern Natural Gas Co.*, 102 FERC ¶ 61,134, at P 22 (2003); *Northern Border Pipeline Co.*, 80 FERC ¶ 61,152 (1997)).

54. The Commission's review of the information contained in Exhibits G, G-I, and G-II indicates that no additional fuel quantities will be required by the project. Thus, the Commission concludes that the project will not increase fuel costs and Eastern Shore did not err by failing to provide a fuel cost analysis.

C. Engineering

55. Commission staff completed an engineering analysis of the information submitted by Eastern Shore in its application. With the proposed facilities, staff analysis shows that Eastern Shore will be able to transport up to 50,000 Dth per day of capacity on its expansion lateral.

56. In Eastern Shore's July 2, 2010 Data Response, Eastern Shore states that it cannot ensure firm service on a daily basis beyond the 40,000 Dth per day under current conditions unless certain design, system, or contractual modifications are required completed. However, the flow models submitted by Eastern Shore in support of Exhibit G of its application indicate that Eastern Shore is able to provide the additional 10,000 Dth per day of capacity. The flow model submitted by Eastern Shore shows that no further system modifications are required in order to transport the additional capacity. Further, because this line's primary purpose is to displace gas that Eastern Shore receives from other interstate pipelines, its downstream facilities are not impacted by the new line. Eastern Shore's proposal creates no additional delivery capacity for any customers. It only provides customers with a new supply source. Therefore, the capacity of the proposed expansion facilities is 50,000 Dth per day.

57. The Delaware PSC asserts that Eastern Shore may not have properly sized the expansion facilities for the level of service they will provide. The selected diameter of a pipeline is determined based on a variety of factors, including the expected receipt pressure, the minimum delivery pressure, the capacity required, and the length of the line. For example, Eastern Shore explains in its answer that its use of a 16-inch-diameter pipeline is intended to minimize the design pressure drop from Honey Brook to Parkesburg and thereby mitigate the risk that potential pressure variations on Texas Eastern could adversely impact Eastern Shore's operations.⁴⁷ Further, Eastern Shore has filed flow models supporting its Exhibit G flow diagrams that indicate that Eastern Shore has appropriately sized the pipeline based on a maximum capacity of 50,000 Dth per day. In its flow models, Eastern Shore appropriately estimated the receipt pressure and the required delivery pressure. Based on this information, the Commission concludes that Eastern Shore's facilities are appropriately designed and not oversized.

⁴⁷ See Answer of Eastern Shore at 7-8.

D. Environmental Analysis

58. On April 27, 2010, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Mainline Extension Interconnect Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register⁴⁸ and was mailed to interested parties including federal, state, and local government officials, agency representatives, environmental and public interest groups, Native American tribes, local libraries and newspapers, and affected property owners.

59. In response to the NOI, the Commission received comments from the Chester County Planning Commission (Chester County), the Lancaster County Planning Commission (Lancaster County), the Pennsylvania Department of Conservation and Natural Resources (PaDCNR), the Pennsylvania Department of Environmental Protection (PaDEP), the U.S. Army Corps of Engineers (COE), and landowner Jonathan Lapp. The primary issues raised concerned the potential impacts on geology and soils, water resources and wetlands, vegetation and wildlife, public safety, cultural resources, and state-listed threatened and endangered species, landowner compensation, and the timing of construction.

60. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), the Commission's staff prepared and placed into the public record an environmental assessment (EA) for Eastern Shore's proposal, issuing a *Notice of Availability* (NOA) of the EA on July 6, 2010, providing a 30-day public comment period. The analysis in the EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. As summarized below, the EA addressed all substantive comments received in response to the NOI.

61. In its comments, Lancaster County raised concerns regarding the project's potential impact on soils and erosion, forested land, Pequea Creek, and the Pequea North Rural Historic District. First, Lancaster County stated that the pipeline would cross a forest block between mileposts 4 and 5, designated a "high priority preservation area" as defined in *Greenspaces, The Green Infrastructure Element of the County's Comprehensive Plan*. Lancaster County indicated that this ridge is part of the Mid-Atlantic Highlands, which is considered a vital forested area. Lancaster County recommended planting native edge forest trees, as opposed to allowing natural revegetation, as proposed. Sections B.1.2 and B.3.1 of the EA addressed potential erosion associated with project construction and the impacts on forested land,

⁴⁸ 75 Fed. Reg. 23,757 (May 4, 2010).

respectively. As stated in Eastern Shore's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan), all areas disturbed by construction (whether inside or outside of the permanent right-of-way) would be revegetated in accordance with written recommendations for seed mixes, rates, and dates obtained from the local soil conservation authority or land management agency. The permanent operational easement would be maintained in an herbaceous state. Within the temporary right-of-way and other workspaces cleared for construction of the project, trees and other woody vegetation would be allowed to stabilize naturally. The EA concluded that the use of Eastern Shore's Plan would adequately minimize impacts on forested land and did not recommend specific tree planting mitigation. However, additional mitigation measures, such as tree plantings, could be determined in consultation with the applicable local or state agencies.

62. With respect to soils and erosion, Lancaster County stated that the Pequea Creek, a tributary of the Susquehanna River and part of the Chesapeake Bay Watershed, has an approved Total Maximum Daily Load for excess nutrient and sediment load. Lancaster County suggested that if Legacy Sediment deposits are encountered during construction, they be treated as an erosive problem and dealt with accordingly. Legacy Sediments are the result of historical milling operations in south-central Pennsylvania, are known to contribute to erosion problems on stream banks where they are present, and can contribute to the existing sediment input into the Chesapeake Bay. As discussed in the EA, Eastern Shore would implement its Plan and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) to minimize erosion, sedimentation, and impacts to waterbodies. In addition, the EA states that Eastern Shore must obtain a permit under Section 404 of the Clean Water Act from the COE, a Section 401 Water Quality Certification permit from the PaDEP, a Chapter 105 Water Obstruction Permit from the PaDEP, and a Chapter 102 Erosion and Sedimentation Permit from the Chester County Conservation District prior to construction. The EA concludes that following the Plan and Procedures, along with any requirements of the applicable permits, would adequately minimize impacts on Pequea Creek from construction and operation of the project. Also, Eastern Shore's proposed dry-ditch crossing for this waterbody would effectively limit sedimentation impacts during construction, and its proposed stream bank restoration measures would adequately minimize potential erosion problems in the Chesapeake Bay Watershed following construction.

63. Further, Lancaster County stated that the project is wholly within the Pequea North Rural Historic District, but that Eastern Shore failed to note this in its resource report and excluded Lancaster County from cultural/historic consultation, along with the Lancaster County Trust for Historic Preservation and the Sadsbury Township Historical Society. Section B.5 of the EA addressed the Pequea North Rural Historic District and recommended that Eastern Shore consult these agencies concerning the impact of the project on this rural historic landscape. To ensure that the Commission's responsibilities under the National Historic Preservation Act (NHPA) are met, Environmental Condition

11 requires Eastern Shore to file additional cultural resource survey reports and an assessment of the project's impact on the Pequea North Rural Historic District, and provide this information to the Pennsylvania State Historic Preservation Office (SHPO), the Lancaster County Trust for Historic Preservation, and the Sadsbury Township Historical Society. Further, Eastern Shore will not be allowed to construct until the Commission staff concludes its consultation with the SHPO.

64. The PaDCNR commented on the project's potential impacts on state-listed threatened and endangered species and stated that surveys would be required for eight state-listed threatened and endangered plant species. As discussed in section B.3.3 of the EA, Eastern Shore conducted surveys for these plants in May 2010. None of the plant species were found in the project area; therefore, the project would not impact these state-listed species.

65. In its comments, the PaDEP noted that the Christina Borough, Chester County wellhead protection area for their public water supply system is located in the vicinity of the proposed project area, and that Chester and Lancaster Counties include habitat that supports the Bog turtle, a federally-listed threatened . The PaDEP also suggested that the EA address direct and indirect impacts to the numerous aquatic resources located within or adjacent to the project. Although the PaDEP did not discuss any specific concerns regarding the project's potential impacts on water resources or on threatened and endangered species, the EA considered all of the points raised by the PaDEP's comments.

66. The COE submitted general comments regarding the COE permits that would be required under section 404 of the Clean Water Act due to construction impacts on waterbodies and wetlands. The COE also noted that it had not yet received a permit application from Eastern Shore for the necessary COE authorizations. In consultation with the COE and the PaDEP, Eastern Shore submitted their application for a Section 404 permit to the PaDEP on February 26, 2010. Further, as stated in section A.5 of the EA, Eastern Shore would obtain all necessary permits, including the Section 404 permit, prior to construction. Also, Environmental Condition 8 requires that Eastern Shore file documentation of all authorizations required under federal law prior to construction.

67. The COE additionally noted that there are unresolved issues regarding threatened and endangered species and cultural resources. In responsive comments filed on August 12, 2010, Eastern Shore included a letter from the FWS stating that the project would not affect the bog turtle and is not likely to adversely affect the Indiana bat.⁴⁹ This concludes consultation with the FWS under Section 7 of the Endangered Species Act

⁴⁹ See Eastern Shore's August 12, 2010 Response to Chester County's Comments at 7, referencing and including July 19, 2010 Letter of FWS.

(ESA); therefore, there is no need to include the EA's recommendations 11 and 12 to the extent they regard consultation with the FWS, as conditions in this order. However, since consultation under Section 106 of the NHPA has not been completed, Environmental Condition 11 requires that Eastern Shore not begin construction until after the Commission completes its obligations under the NHPA.

68. Mr. Jonathan Lapp, an affected landowner, stated that construction should not begin until October 2010 to ensure that crops are harvested for the year. As stated in the EA, Eastern Shore would not begin construction until late summer or early fall 2010 due to outstanding permitting and consultation requirements. However, should construction result in any damage to crops, Eastern Shore would provide compensation for lost production during construction and restoration according to agreements developed between Eastern Shore and any affected landowners. In accordance with its Plan, Eastern Shore would monitor agricultural areas affected by construction for the first and second growing season to ensure that crop yields following Eastern Shore's restoration efforts are similar to adjacent undisturbed portions of the same agricultural field. Mr. Lapp also requested monetary compensation based on the volume of natural gas transportation across his property. As stated previously, compensation for easements is a matter for discussion between the landowner and Eastern Shore, and is outside the scope of the EA and the Commission's jurisdiction.

69. Finally, Chester County submitted comments raising concerns regarding the project's impact on land use and its consistency with the policies and objectives of the 2009 Chester County Comprehensive Policy Plan, *Landscapes2*. Chester County indicated that the proposed project extends through a large area of land designated as Agricultural Landscape, and would cross or extend near five areas designated as Natural Landscape, as well as land designated Suburban Landscape. Chester County stated that the project's removal of land from cultivation will negatively impact agricultural production, the viability of farming, and the rural lifestyle in West Sadsbury Township. Chester County also raised concerns that the project may impact four floodplain areas since it extends across two streams and will be close to two additional streams. Chester County raised these same concerns in its comments on the EA, which are addressed in detail below, along with other comments on the EA. As discussed below, the project's potential impacts on these environmental resources were addressed in the EA.

70. In response to the Commission's July 6, 2010 NOA of the EA, the Commission received comments on the EA from landowners Terry and Lynn Guidetti, the PaDEP, Lancaster County, and Chester County. On August 12, 2010, in separate filings, Eastern Shore submitted comments responding to the comments of Chester County and the PaDEP.

71. Terry and Lynn Guidetti, landowners along the pipeline route (near milepost 6.5) in West Sadsbury Township, Pennsylvania are concerned that dust, vibration, and noise from blasting would: (1) negatively affect their son's health; (2) damage their house; (3) impact their hearing; and (4) prevent them from effectively teaching music in their home office during evening hours. As stated in section B.1.1 of the EA, Eastern Shore does not anticipate blasting along the entire project area. If shallow bedrock is encountered, Eastern Shore has stated that it would use a hydraulic hammer or similar machinery. Eastern Shore's fugitive dust control measures, which include limiting vehicle speeds to 10 to 15 miles per hour and watering of dirt roads used during construction, would reduce the impact on air quality during pipeline construction. In addition, Eastern Shore would be subject to West Sadsbury Township's Ordinance 1999-3, which restricts noise to less than 70 decibels between the hours of 7:00 am to 9:00 pm. Eastern Shore states that typical construction hours for the project would be from 7:00 am until 5:00 pm. Although unlikely, construction may extend to, but not beyond, 7:00 pm. Because Eastern Shore would construct during daytime hours and would be required to comply with Ordinance 1999-3, the Commission concludes that noise impacts in the project area would not be significant.

72. The PaDEP asserts that a more detailed explanation of the types of stream crossing techniques that were considered should be included in the EA. With its August 12, 2010 responsive comments to the PaDEP, Eastern Shore submitted a document detailing its stream crossing methods and site-specific plans. The Commission's staff contacted the PaDEP to direct them to the location of the requested information in the public file for this proceeding. Further, Eastern Shore is required to conduct all waterbody crossings in accordance with their Procedures. As stated in section B.2.2 of the EA, all of the waterbodies crossed by the project are coldwater fisheries and Eastern Shore's Procedures require that the waterbody crossings be conducted using dry-ditch methods (either dam-and-pump or flume), rather than a wet-ditch crossing.

73. The PaDEP also states that although the EA indicates that hydrostatic test waters will not be discharged on-site, an office of the PaDEP received an application for a permit to use the discharges resulting from the hydrostatic testing. Therefore, the PaDEP requests that the EA be updated to include this impact. In its responsive comments to the PaDEP, Eastern Shore states that although at the time of the filing of its application, it was its intention to dispose of the hydrostatic water off-site, a subsequent determination was made that the hydrostatic test water would be discharged to a construction staging area adjacent to the pipeline right of way. Eastern Shore explains that test water will be slowly discharged from a temporary manifold system installed on the main pipeline into a silt fence and hay bale containment structure with a splash plate in an upland area to diffuse the impact of the water as it is being discharged. Eastern Shore states that it will adhere to its main performance standard of ensuring that no erosion or waterbody/wetland sedimentation occurs from the discharge activities, which will be authorized by a PAG-10 General Permit for discharge of hydrostatic pressure testing

water for natural gas pipelines. Eastern Shore also states that because the water will contact only new pipeline surfaces and discharge will be to an upland area, no chemical analysis of influent or effluent is anticipated. In addition, Eastern Shore will conduct hydrostatic testing utilizing the methods outlined in its Plan. Therefore, any potential impacts from the discharge of hydrostatic test water would be adequately minimized.

74. Lancaster County states that the EA lacks long-term mitigation of impacts on the forested land and streams crossed by the project. Lancaster County requests that Eastern Shore provide for riparian buffer plantings and native tree plantings, even in the temporary workspace and construction areas, and for area stream and open-space restoration. A total of about four acres of forested land would be permanently impacted due to permanent right-of-way maintenance. As stated in Eastern Shore's Plan, its permanent right-of-way would be maintained in an herbaceous state. An herbaceous state is necessary to permit Eastern Shore access to the pipeline, which revegetation with trees and other wood vegetation would prevent. The temporary construction right-of-way and workspaces within forested areas would be revegetated in accordance with the recommendations obtained from the local soil conservation authority or land management agency. However, as provided by Eastern Shore's Plan, trees and other woody vegetation, in particular, would be allowed to stabilize naturally within the temporary right-of-way and other workspaces cleared for construction of the project. Any additional specific mitigation measures beyond the requirements of Eastern Shore's Plan would be determined in consultation with the applicable local and state agencies. The Commission concludes that the impacts on forested land have been adequately minimized. With respect to impacted streams, Eastern Shore would be required to conduct all stream crossings in accordance with their Procedures, which include revegetation of riparian areas with native vegetation and limiting vegetation maintenance adjacent to waterbodies during operation of the project. These measures would minimize long-term impacts on waterbodies.

75. In addition, Lancaster County questions whether Eastern Shore's proposed in-service date of November 2010 is feasible due to the required timeframe for construction within waterbodies (June 1-September 30). The in-service date of November 2010 is Eastern Shore's originally proposed schedule. However, this schedule could change as all the necessary permits and approvals are obtained by Eastern Shore.

76. In its comments on the EA, Chester County reiterates its belief that the project is inconsistent with the goals and policies of the Chester County Comprehensive Policy Plan, *Landscapes2*. Specifically, Chester County states that the project is inconsistent with the *Landscapes2* policies to: (1) "[s]upport agricultural preservation to preserve the critical mass of farmland necessary to sustain a viable agricultural industry;" and

(2) “[l]imit infrastructure improvements to those supporting the agricultural industry and use context sensitive design to maintain community character.”⁵⁰

77. Most of the project would cross areas currently in agricultural production. To return the right-of-way to agricultural use following construction, Eastern Shore would follow the requirements in its Plan, including segregating and replacing topsoil in actively cultivated or rotated croplands and pastures. Eastern Shore would monitor the right-of-way as described in the Plan to ensure that the productivity of agricultural areas is reestablished. As stated in the EA, Eastern Shore would provide compensation for lost production during construction and restoration according to agreements developed between Eastern Shore and landowners. Also, since the pipeline would be buried and the land returned to agricultural use, the agricultural character of the community would remain the same following construction. No aboveground facilities would convert agricultural land in Chester County to industrial use.

78. Chester County also asserts that the proposed project is inconsistent with *Landscapes2* Objective LU 3 for Suburban Landscape for the small area of suburban landscape that it would cross. This policy is to “[p]romote new development in suburban landscapes to accommodate anticipated population and employment growth, using appropriate density, sustainable design, and smart transportation principles.” The Commission sees no reason why the presence of the pipeline would impede these goals. In fact, the project could provide a source of natural gas or be used to generate electricity to support future population and employment growth in this area of Chester County, although no taps on the pipeline are proposed in the area at this time.

79. Chester County emphasizes its concern that the project may have a negative impact on efforts to retain a profitable agriculture and the rural character that exists in West Sadsbury Township. The EA discusses project impacts on agriculture, as described above, and we conclude that the implementation of Eastern Shore’s Plan would minimize impacts on agriculture. Moreover, the rural character of the project area would be preserved because agricultural use of the right-of-way could resume after construction of the project.

80. Chester County also raises a number of specific concerns or requests in its comments on the EA. Chester County questions whether the project would be consistent with the Chesapeake Bay Tributaries Strategies, a program which calls for a reduction in the nutrient and sediment loads in the Chesapeake Bay and its tributaries. The EA states that Eastern Shore would use its Plan and Procedures to minimize erosion, sedimentation,

⁵⁰ Chester County’s August 9, 2010 Comments on EA at 1. These are Objectives LU 5.1 and LU 5.2 for Agricultural Landscape in *Landscapes2*.

and impacts to waterbodies. In addition, as discussed in the EA, Eastern Shore must obtain additional state and local stream crossing permits prior to construction. We conclude that Eastern Shore's implementation of the measures contained in its Plan and Procedures, along with requirements of the applicable permits, would minimize impacts on waterbodies from construction and operation of the project and sufficiently protect the Chesapeake Bay watershed.

81. Chester County requests information indicating whether and/or how landowners (namely the Amish/plain sect farmers) were contacted regarding the project. All directly affected landowners were initially contacted by Eastern Shore as required by Commission regulation after Eastern Shore filed its application, and were also contacted by an Eastern Shore representative for right-of-way access to conduct surveys and for a right-of-way easement agreement. On April 20, 2010, Eastern Shore invited all landowners to an open house to explain its project and solicit input on its plans; twenty-four landowners attended the open house. In addition, all directly affected landowners received our NOI, as discussed above. The public was also invited to accompany Commission staff on a project site review by the *Notice of Onsite Environmental Review* issued April 5, 2010. Finally, all landowners received a copy of the EA.

82. Chester County also requests information indicating whether Eastern Shore identified any replacement areas for water wells that may be damaged during construction. Eastern Shore identified two private water wells within 150 feet of the construction workspace. As described in the EA, Eastern Shore would conduct well testing prior to and after construction to determine any impact to water quality. If it is determined that a well is impacted by construction of the proposed facilities, Eastern Shore would make any necessary repairs. In the unlikely event that repairing an existing well is not possible, Eastern Shore must provide an alternative source of water. At this time, there are no plans to drill replacement water wells.

83. Chester County states that Pequea Creek contains both High Quality and Exceptional Value designations on its tributaries. Chester County requests that Eastern Shore indicate whether these state designations were considered in its application. The resource reports filed by Eastern Shore indicated that Pequea Creek at the crossing location is designated as High Quality by the state. Also, the PaDEP would issue a permit to cross waterbodies prior to construction as stated above and in the EA. Eastern Shore's proposed stream crossing mitigation and its proposed restoration measures would adequately ensure that the project does not adversely impact the High Quality designation of the Pequea Creek.

84. Chester County requests that all workspaces and staging areas be revegetated, as opposed to allowing these sites to "eventually revegetate to their pre-construction condition," as proposed. As explained above, these areas outside of the permanent easement would be revegetated with grasses and/or herbaceous species as required by

Eastern Shore's Plan and Procedures. In accordance with the Plan, those areas outside of the permanent easement currently vegetated with woody species would be allowed to naturally revegetate with woody species. Any additional specific mitigation measures beyond the requirements of Eastern Shore's Plan would be determined in consultation with the applicable local or state agencies.

85. Chester County also requests that the results of consultation with the FWS be made public. The results of Eastern Shore's informal consultation with the FWS are included in Eastern Shore's August 12, 2010 filing with the Commission. As noted above, included in this filing is a FWS letter dated July 19, 2010 stating that the project would not affect the bog turtle and is not likely to adversely affect the Indiana bat. Therefore, the Commission's consultation with the FWS under the ESA is complete, and there is no need to include the EA's recommendations regarding formal consultation between the Commission and the FWS, as explained earlier.

86. Chester County requests that any local trails, natural and scenic areas, or historic districts be identified. As documented in the EA, staff's analysis did not identify any local trails or natural and scenic areas. The only historic district that was identified for the project is the previously discussed Pequea North Rural Historic District. The SHPO is still in the process of determining the potential impact of the project on the Pequea North Rural Historic District. Environmental Condition 11 requires Eastern Shore to file SHPO comments on the potential impact on this historic district and any required mitigation prior to construction. The SHPO comments would also be available on the Commission's website.

87. Finally, Chester County requests clarification regarding the purpose of the blue lines along Routes 1 and 30 on the map in Appendix A of the EA. The Commission clarifies that the blue lines to which Chester County refers are Routes 1 and 30 themselves, and do not represent additional proposed pipelines or alternative routes.

88. The Commission has reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on consideration of this information, the Commission concludes that if constructed and operated in accordance with Eastern Shore's application, as supplemented, and in compliance with the environmental conditions in the Appendix to this Order, the Commission's approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

89. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of these certificates. 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/replacement or operation) of facilities approved by this Commission.⁵¹

E. Conclusion

90. The Commission on its own motion, received and made a part of the record all evidence, including the applications, amendments, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Eastern Shore authorizing it to construct and operate its Mainline Extension Interconnect Project, as described and conditioned herein, and as more fully described in the application and supplements.

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

- (1) Eastern Shore completing the authorized construction of the proposed facilities and making them available for service within one year of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Eastern Shore complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Eastern Shore's compliance with the environmental conditions listed in the appendix to this order.

(C) Eastern Shore is directed to execute firm contracts equal to the level of service represented in its precedent agreements with the Chesapeake LDCs prior to the commencement of construction.

⁵¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P. et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

(E) The Mainline Extension Interconnect Project will have a certificated capacity of 50,000 Dth per day.

(F) Eastern Shore's proposal to use its Rate Schedule FT Zone 1 reservation rate as its initial rate for the project is approved.

(G) The protests of the Delaware PSC, Delmarva, and Easton, and the Delaware PSC's requests for a deficiency notice, formal hearing, or the imposition of settlement judge procedures are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions for Eastern Shore's Mainline Extension Interconnect Project

1. Eastern Shore 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. Eastern Shore 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 the OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI'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, Eastern Shore shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications

of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Eastern Shore's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Eastern Shore'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. Eastern Shore 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, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Eastern Shore's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/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. **Within 60 days of the acceptance of this Certificate and before construction begins**, Eastern Shore shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Eastern Shore must file revisions to the plan as schedules change. The plan shall identify:

- a. how Eastern Shore 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. how Eastern Shore will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company 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 materials;
 - e. the location and dates of environmental compliance training and instructions Eastern Shore will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training sessions;
 - f. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Eastern Shore will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Eastern Shore shall file updated status reports with the Secretary **on a biweekly 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. an update on Eastern Shore's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs 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. a description of the 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 landowner/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 Eastern Shore from other federal, state, or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Eastern Shore shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
 9. Eastern Shore must receive written authorization from the Director of OEP **before placing the project into service**. 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**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions with which Eastern Shore 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. Eastern Shore shall **not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Eastern Shore files with the Secretary:
 - (1) any additional cultural resources survey report(s), and an assessment of the impact on the Pequea North Rural Historic District;
 - (2) site evaluation report(s) and avoidance/treatment plan(s), as required;

- (3) comments on the cultural resources report(s) and plan(s) from the Pennsylvania State Historic Preservation Office; and
- (4) a record of consultation with the Lancaster County Trust for Historic Preservation and the Sadsbury Township Historical Society.
- b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. The FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Eastern Shore in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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