

140 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP12-28-000

ORDER ISSUING CERTIFICATE

(Issued August 9, 2012)

1. On December 9, 2011, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) 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, install, modify, and operate certain pipeline and compressor facilities to be located in Pennsylvania in order to provide transportation for an additional 240,000 dekatherms (Dth) per day of firm natural gas (MPP Project). For the reasons discussed below, the Commission grants Tennessee's requested certificate authorizations subject to the conditions described herein.

I. Background and Proposal

2. Tennessee is a limited liability company organized and existing under the laws of the State of Delaware. Tennessee is engaged in the transportation and storage of natural gas in interstate commerce subject to jurisdiction of the Commission and is a natural gas company within the meaning of NGA section 2(6).¹ Tennessee's mainline transmission system extends in a northeasterly direction from the States of Texas and Louisiana, and the Gulf of Mexico, through the States of Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

3. Tennessee states that the MPP Project will provide needed infrastructure to transport natural gas produced in the Marcellus Shale supply area to Tennessee's market area. Tennessee proposes to construct and operate 7.9 miles of 30-inch-diameter pipeline

¹ 15 U.S.C. § 717a(6) (2006).

loop in Potter County, Pennsylvania, designated as Loop 313. Loop 313 would be adjacent to Tennessee's existing 24-inch-diameter 300 Line for the majority of its length except for one minor deviation to avoid a wetland area. Tennessee also proposes to construct a pig² launcher and miscellaneous above-ground facilities within the boundaries of its Compressor Station 313. In addition, the project would consist of facility modifications to allow for bi-directional flow at four existing compressor stations in Pennsylvania, namely, Compressor Station 219 in Mercer County, Compressor Station 303 in Venango County, Compressor Station 310 in McKean County, and Compressor Station 313 in Potter County.

4. Tennessee also states that it has reserved certain existing transportation capacity on its system for the project pursuant to Article XXVI, section 5.8 of the General Terms and Conditions of its FERC Gas Tariff. Specifically, Tennessee states it reserved a total of 240,000 Dth per day of capacity for a minimum of fifteen years from the suction side of Station 219 to certain specified delivery meters effective the earlier of November 1, 2013, or the actual in-service date of the project.

5. Tennessee states it held a non-binding open season from August 11 to September 8, 2010, to solicit interest in firm transportation service associated with the MPP Project. Subsequently, Tennessee executed binding precedent agreements with Southwestern Energy Services Company (Southwestern) for 100,000 Dth per day and with Chesapeake Energy Marketing, Inc. (Chesapeake) for 140,000 Dth per day, of firm transportation capacity at discounted rates. Tennessee explains that both Southwestern and Chesapeake qualified for Anchor Shipper status because they committed to a transportation quantity equal to or greater than 100,000 Dth per day for a minimum contract term of 15 years. In exchange for this commitment, Tennessee states the precedent agreements include certain rate and contractual incentives that it states were necessary to secure the contractual commitments necessary for the project to proceed. Tennessee requests that the Commission find these provisions do not result in material deviations from its *pro forma* Rate Schedule FT-A agreement or, alternatively, if they are found to constitute material deviations, that they are acceptable because they do not result in undue discrimination.³

² A "pig" is a tool that is inserted into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

³ Tennessee filed each of the executed precedent agreements, which include the Firm Transportation Agreements and Discounted Rate Agreements for each shipper, as exhibits in Exhibit I. Tennessee requests confidential treatment of the precedent agreements contained in Exhibit I pursuant to section 388.112 of the Commission's Rules of Practice and Procedure.

6. Tennessee states it held a binding open season for the MPP Project from August 5, to August 25, 2011.⁴ Tennessee indicates that it provided potential shippers the option of qualifying as Anchor Shippers with the equivalent rates, terms, and conditions of service that were offered and agreed to with Southwestern and Chesapeake. Tennessee states that no party other than Southwestern and Chesapeake submitted a bid during the open season.

7. Tennessee proposes to use the applicable recourse rates under its Rate Schedules FT-A and IT as the maximum recourse rates for service on MPP Project facilities⁵ and to roll in the cost of the MPP project facilities into its general system rates in its next NGA section 4 rate proceeding. Tennessee requests that the costs associated with the MPP Project facilities be accorded a presumption of rolled-in rate treatment in its next NGA section 4 rate proceeding because it states the MPP Project revenues will exceed the project's incremental cost of service.

II. Notice, Interventions, and Comments

8. Notice of Tennessee's application was published in the *Federal Register* on December 22, 2011 (76 Fed. Reg. 79,673). The parties identified in Appendix A to this order filed timely, unopposed motions to intervene.⁶ The interventions of Southwestern and Chesapeake included comments in support of Tennessee's application. The interventions of Atmos Energy Corporation (Atmos) and Piedmont Natural Gas Company, Inc. (Piedmont) included comments addressing Tennessee's request for a presumption of rolled-in rate treatment in Tennessee's next section 4 rate proceeding. These comments are addressed in the rate section of this order.

9. Allegheny Defense Project filed an untimely motion to intervene. The Allegheny Defense Project demonstrated an interest in this proceeding and its late intervention will not delay or otherwise prejudice the proceeding. Thus, we will grant its untimely motion to intervene.⁷ The Allegheny Defense Project, along with Heartwood and the Buckeye

⁴ Tennessee indicates that it solicited turn-back capacity in both the non-binding and binding open seasons but no shipper offered to turn back capacity in response to either open season.

⁵ Tennessee indicates that these rates are exclusive of fuel and lost and unaccounted for charges, ACA charges, and other applicable surcharges specified in Tennessee's FERC Gas Tariff.

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2012).

⁷ *See* 18 C.F.R. § 385.214(d) (2012).

Forest Council (collectively, Defense Project), also filed comments raising concerns related to environmental scoping issues that are addressed in the environmental section of this order.

III. Discussion

10. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁸

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to 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

⁸ 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

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

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

13. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, Tennessee has presented evidence that the incremental revenue from services using the proposed facilities will exceed the incremental costs of constructing and operating the proposed facilities. If this proves to be the case, there will be no subsidization of the facilities by existing customers, and rolled-in rate treatment for the project's costs should have a positive impact on rates for existing customers.

14. The project will not adversely affect Tennessee's existing customers, or other pipelines and their customers. The proposed facilities are designed to provide incremental service without degradation of service to Tennessee's existing firm customers. In addition, Tennessee's project is designed to meet new demand and there is no evidence that service on other pipelines will be displaced or bypassed.

15. Tennessee has designed the MPP Project to minimize the impact on landowners and the environment. The proposed pipeline looping segment will be constructed within or parallel to existing rights-of-way to the extent practicable. All of the modifications at existing compressor stations will occur within the existing fence lines of the compressor stations, with limited exceptions. In addition, Tennessee states that it will seek to acquire necessary rights-of-way by negotiation and minimize reliance on eminent domain.

16. Tennessee has entered into long-term precedent agreements for 100 percent of the design capacity of the project. Based on the benefits Tennessee's proposal will provide to the project shippers, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities along the route, we find that Tennessee's proposed MPP Project is consistent with the Certificate Policy Statement and required by the public convenience and necessity, as conditioned in this order.

B. Rates

17. As stated earlier, Tennessee proposes to charge its currently-effective rates under Rate Schedules FT-A and IT as its initial recourse rates for service using the MPP Project facilities. In addition, Tennessee seeks a presumption that it can roll the overall costs of the expansion facilities into its system-wide rates in its next NGA section 4 proceeding. Tennessee maintains that the project facilities should be accorded a presumption of rolled-in rate treatment because project revenues using the agreed upon discounted transportation rates for the shippers exceed the incremental cost of service for the project. Specifically, Tennessee states that the estimated transportation revenues at the agreed-

upon discounted transportation rates for Chesapeake and Southwestern is approximately \$24.7 million, compared to a cost of service of approximately \$15.5 million.¹⁰ Thus, Tennessee contends that its proposal to roll the MPP Project costs into its general system rates is consistent with the Certificate Policy Statement, which recognized that rolled-in rate treatment is appropriate in cases of inexpensive expansibility made possible because of earlier costly construction.¹¹

18. Piedmont and Atmos contend that Tennessee's proposal for a presumption of rolled-in pricing is premature and requests that any decision concerning the rate treatment be deferred until Tennessee's next NGA section 4 rate proceeding. They claim that during that proceeding, system customers would have the opportunity to request all necessary data required to evaluate the requested roll-in and provide fully informed input on Tennessee's proposal.

19. We do not find that Tennessee's request for a presumption of rolled in pricing is premature, as claimed by Piedmont and Atmos. Since issuance of the 1995 Certificate Policy Statement, the Commission's practice in certificate proceedings is to make an upfront determination on the rate treatment for expansion projects in order to provide the industry with as much rate certainty as is possible.¹² Piedmont and Atmos have not demonstrated why this policy should not apply in this proceeding.

20. Here, Tennessee has sufficiently demonstrated that revenues from the project are expected to exceed the cost of service so its existing customers will not be burdened with higher rates. Thus, we grant Tennessee's request for a presumption of rolled-in rate treatment for the costs of the MPP Project, absent a material change of circumstances. However, we emphasize that this finding is based on the factual representations made by Tennessee in this proceeding. When Tennessee files its next NGA section 4 rate case to recover the costs of the MPP Project, Piedmont, Atmos, or any other party will have discovery rights afforded by the Commission's Rules of Practice and Procedure.¹³ If any party believes that the factual representations made in this proceeding ultimately do not prove to be true, it may raise such pricing issues at that time.

¹⁰ Tennessee's Certificate Application, Exhibit N.

¹¹ Tennessee's Application at 13 (*citing* Pricing Policy Statement, 88 FERC ¶ 61,227 at 61,746).

¹² *See Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241, at 61,915 (1995) (1995 Certificate Policy Statement).

¹³ *See* 18 C.F.R. Part 385, Subpart D (2012).

C. Contractual Commitments in Precedent Agreements

21. As discussed above, Chesapeake and Southwestern each qualified as Anchor Shippers in the binding open season by committing to a firm transportation quantity of at least 100,000 Dth per day for a term of 15 years. In exchange for this commitment, Tennessee states that these shippers received Anchor Shipper benefits or incentives as follows: (1) a contractual right-of-first refusal (ROFR); (2) the right to exercise a revenue reduction option to reduce the primary term from 15 years to 10 years; (3) the right to amend the shipper's primary delivery points at the discounted rates; (4) an option to acquire certain unsubscribed project transportation capacity; and (5) an option to reduce the shippers' respective transportation quantities on a pro-rata basis in the event that the in-service date for Tennessee's Northeast Upgrade Project in Docket No. CP11-161-000 is delayed.¹⁴ In addition, Tennessee notes that the precedent agreements include creditworthiness provisions that require each shipper to meet certain objective creditworthiness standards, or to provide Tennessee with credit support in the form of a guaranty.

22. Tennessee states that the executed service agreements with Chesapeake and Southwestern will provide the firm contractual support for the project and reflect the contractual incentives that were necessary for the shippers to make binding commitments. Tennessee argues that, absent these contractual commitments, the project would not proceed. Tennessee asserts that it is reasonable to provide these shippers with contractual ROFR rights and the primary term revenue reduction option in order to address their future capacity needs. Tennessee also claims that the primary delivery point amendment and option to acquire unsubscribed project capacity incentives are reasonable provisions to address certain commercial concerns of the shippers and are related to the agreed-to discounted transportation rates. Finally, Tennessee maintains that in the event that the Northeast Upgrade Project is not placed in service as of the anticipated November 1, 2013 in-service date, the shippers are provided a reasonable allocation method that would apply in that situation.

23. Moreover, Tennessee notes that it was prepared to offer the same Anchor Shipper incentives that were offered to Chesapeake and Southwestern to any other potential shipper who submitted a qualifying bid in the binding open season. Because no other shippers submitted bids in the open season, Tennessee claims that other shippers or

¹⁴ On May 29, 2012, the Commission issued an order authorizing Tennessee's proposal in Docket No. CP11-161-000, subject to conditions. *Tennessee Gas Pipeline Company, L.L.C.*, 139 FERC ¶ 61,161 (2012). The availability of the MPP Project capacity is based, in part, on the Northeast Upgrade Project being placed in service as of November 1, 2013.

potential shippers cannot be viewed as being similarly situated to Chesapeake and Southwestern. Tennessee also argues that, under the Commission's existing negotiated rate and discount policies, project sponsors may provide rate incentives to shippers on a number of grounds, including volumes to be transported, without constituting undue discrimination. For these reasons, Tennessee claims that no provisions of the service agreements executed with Chesapeake and Southwestern constitute material deviations from the *pro forma* Agreement contained in its tariff. Alternatively, if the Commission finds any of these provisions constitute material deviations, Tennessee requests that the Commission find them acceptable because they are not unduly discriminatory.

24. In addition to the provisions in the precedent agreements, Tennessee states that there are certain differences between each shipper's proposed firm transportation agreement, attached as Exhibit A to the precedent agreements, and Tennessee's *pro forma* service agreement that state: facts specific to the project; Anchor Shipper benefits; and that service under the agreements cannot be provided until necessary authorizations are received and the project facilities are constructed. According to Tennessee, the project transportation agreements will: (1) contain "Whereas" clauses describing the specific transaction; (2) address the commencement date of the agreements and/or the need for acceptable regulatory authorization; (3) indicate that Tennessee will construct the project facilities; (4) contain no language through which individual rate components may be adjusted downward or upward (because Chesapeake and Southwestern have agreed to pay discounted rates); and (5) indicate the sections of the precedent agreements that will survive the execution and effectiveness of the Firm Transportation Agreements.

25. The Commission finds that the incorporation of non-conforming provisions described above in Chesapeake's and Southwestern's service agreements constitute material deviations from Tennessee's *pro forma* service agreement. However, in other proceedings, the Commission has found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.¹⁵ We find that the non-conforming provisions identified by Tennessee are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.¹⁶

¹⁵ See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008) and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

¹⁶ See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at 62,345 (2002).

26. Tennessee must file at least 30 days but no more than 60 days before the in-service date of the proposed facilities, an executed copy of each non-conforming agreement disclosing and reflecting all non-conforming language and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112(b) of the Commission's regulations.¹⁷ This required disclosure includes any transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement. In addition, the Commission emphasizes that the above determinations relate only to those items as described by Tennessee in section VII of its application and not to the entirety of the precedent agreements or the language contained in the precedent agreements.¹⁸

D. Environmental Analysis

27. On January 4, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed MPP Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

28. To satisfy the requirements of the National Environmental Policy Act (NEPA), Commission staff prepared an environmental assessment (EA) for Tennessee's proposal. The EA was prepared with the cooperation of the U.S. Army Corps of Engineers. The analysis in the EA addresses 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. The EA addresses all substantive comments received in response to the NOI.

29. The Defense Project submitted scoping comments in response to the NOI. The Defense Project requests that the Commission analyze the software used in pipeline pigs because it is concerned that the software may not be properly calibrated to detect any problems which pose risks to humans, wildlife, and the environment. The EA explains that maintenance operations, including the software used in pigs, are regulated by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration

¹⁷ 18 C.F.R. § 154.112(b) (2012).

¹⁸ We note we are only ruling herein on the specific provisions of the agreements highlighted by Tennessee in its application. The full agreements will be reviewed upon their filing.

(PHMSA) under 49 CFR 192.¹⁹ Therefore, the Commission is not responsible for evaluating the maintenance software used in pigging operations or how pigging operations should be conducted. Commission staff alerted PHMSA to these comments and the potential need to investigate these claims.

30. The Defense Project expresses concern about the increased production of shale gas and requests that the Commission's analysis consider the cumulative impacts of shale gas drilling on the environment including, among other things, public forests, water quality, air quality, and wastewater disposal issues. The EA includes an analysis of the impacts associated with other jurisdictional pipeline projects, wells and gathering systems, and wind development projects that have recently been completed, are ongoing, or are expected to begin in the foreseeable future. The EA also addresses general potential cumulative impacts from Marcellus Shale development on various natural resources including vegetation and wildlife; geology and soils; water resources; and land use and visual impacts. The EA concludes that when evaluated with other past, present, and reasonably foreseeable projects in the area, the MPP Project would not result in significant cumulative impacts.²⁰

31. In addition, the Defense Project expresses concern that the project will lead to the exportation of shale gas. As identified in the EA,²¹ the purpose of the project is to provide gas produced in Pennsylvania to markets in Tennessee and Ohio. Under these circumstances, we find that the Defense Projects' concern that the project will lead to the export of natural gas is speculative.

EA Comments

32. The EA was issued for a 30-day comment period and placed into the public record on May 18, 2012. In response to the EA, we received a comment from Dr. Terrance Foust concerning project impacts on his property. In addition, Tennessee submitted comments regarding EA recommendation 11 requiring it to remove felled trees from construction workspaces by April 15th. These comments are discussed below.

33. Dr. Foust is a landowner at milepost 2.8 of Tennessee's route and his residence is within several hundred feet of the pipeline. Dr. Foust states that his sole source of water is a spring near the pipeline route. He commented that potential pipeline leaks over time would contaminate the spring, threatening his health, safety, and property value.

¹⁹ EA at 42.

²⁰ EA at 50-55.

²¹ EA at 2.

Dr. Foust states that the EA does not disclose the true impact on the water supply to this property.

34. Section 2.1 of the EA discusses impacts to groundwater resources and determines that the project would not result in significant impacts on groundwater resources, including Dr. Foust's water supply. Commission staff visited Dr. Foust's property during an environmental site review on March 20, 2012, which was noticed in the Federal Register and open to the public. Staff viewed the crossing location at Peet Brook, as well as the water collection system fed by the spring/wetland complex referenced in Dr. Foust's comments. Tennessee's alignment for the pipeline is offset from its existing pipeline across Dr. Foust's property, approximately 50 feet south and downgradient of Dr. Foust's water collection system, and construction would be 118 feet from his wellhouse. Neither the pipeline nor construction workspaces cross the spring or Dr. Foust's water collection system.

35. As identified in the EA, Tennessee will implement protective measures to protect groundwater supplies as outlined in its *Wetland and Waterbody Construction and Mitigation Procedures* including the installation of erosion control devices.²² These measures will reduce the likelihood of any construction-related runoff reaching the intake of Dr. Foust's water collection system. Furthermore, because Tennessee's crossing of Peet Brook is downstream of Dr. Foust's water supply system, any increase in turbidity from the waterbody crossing would not impact the intake or the quality of Dr. Foust's water.

36. In addition to the mitigation measures above, Tennessee has committed to offer pre- and post-construction well testing to well owners,²³ which include Dr. Foust. In the event that any unforeseen impacts on water supplies are realized as a result of construction, the EA identifies Tennessee's commitment to provide the impacted landowner with an alternate water source. While we have no reason to expect that construction of this project will negatively impact Dr. Foust's water supply, if Dr. Foust's water collection system or wellhouse are nevertheless adversely affected by construction, Tennessee will provide him with an alternative water source and make repairs to his water supply system. Therefore, we find that with implementation of Tennessee's environmental construction procedures and mitigation measures, the project would not significantly affect Dr. Foust's access to clean drinking water.

37. Dr. Foust claims that the EA fails to meaningfully analyze alternative routes that would be less environmentally intrusive and suggests that Tennessee re-route the pipeline

²² EA at 3, 20, 22.

²³ EA at 17.

further to the south to avoid impacts on Peet Brook and its associated wetlands. Furthermore, he also states that the Commission must prepare an environmental impact statement (EIS) to fully evaluate the impacts of the proposed pipeline.

38. We disagree. The EA specifically analyzes an alternative involving Dr. Foust's property that would place the pipeline on the northern side of Tennessee's existing pipeline rather than on the southern side, as proposed, in an effort to avoid impacts on forested land. However, the EA dismissed this alternative because "it would place the pipeline closer to [Dr. Foust's] residence and *place this landowner's wellhouse within the construction workspace* [emphasis added]." ²⁴

39. Further deviation off of Dr. Foust's property or further to the south of the existing and proposed rights-of-way, as suggested by Dr. Foust, would result in greater disturbance and additional impacts on forested lands and other resources. Therefore, we find this alternative is not environmentally preferable. In comparison, the route approved by this order avoids the spring, the collection system, and the wellhouse, although this route impacts slightly more forested land. Further, Commission policy generally favors the co-location of new pipelines with existing utility corridors.

40. In regard to Dr. Foust's assertion that an EIS instead of an EA should have been prepared, the Council on Environmental Quality regulations implementing NEPA states that an EA may be prepared to determine if impacts on the environment would be significant and warrant the preparation of an EIS. ²⁵ Here, the EA concludes, and we agree, that Tennessee's project would not result in significant environmental impacts. Therefore, an EIS is not required.

41. Finally, Dr. Foust argues that the EA does not address the potential contamination of his water source from the pipeline due to leaks and the risk to public health. We disagree. Tennessee will be required to design, install, inspect, construct, and maintain the certificated facilities in accordance with U.S. Department of Transportation, Pipeline and Hazardous Materials Administration's *Minimum Federal Safety Standards* in Title 49 of the Code of Federal Regulations Part 192. In accordance with these regulations, Tennessee would regularly inspect its facilities for leakage as part of scheduled operations and maintenance. ²⁶ We note that Tennessee's existing 26-inch-diameter

²⁴ EA at 58.

²⁵ Council on Environmental Quality regulations state that, where an EA concludes in a finding of no significant impact, an agency may proceed without preparing an EIS. See 40 C.F.R. §§ 1501.4(e), 1508.13 (2012).

²⁶ EA at 42.

natural gas pipeline (designated as 300 Line), which has been in-service for over 50 years, is between Dr. Foust's spring and wellhouse, and neither we nor Dr. Foust identified any adverse impacts on his water system as a result of the construction or operation of the existing pipeline.

42. Tennessee submitted comments on EA recommendation 11, which requires, among other things, that Tennessee remove all felled trees from construction workspaces by April 15th of the calendar year of construction. Recommendation 11, requiring a Habitat Restoration Plan, was incorporated into the EA at the request of the U.S. Fish and Wildlife Service (FWS) in order to reduce potential impacts on ground dwelling migratory bird species.

43. Tennessee argues that complying with the requirement to remove the felled trees by April 15th is problematic for several reasons. Tennessee notes that the Pennsylvania Fish and Boat Commission (PAFBC) regulations prohibit the construction of equipment bridges over any Class A Wild Trout stream prior to April 15, 2013; therefore, Tennessee would not be able to access portions of the right-of-way that lie between those streams. Further, Tennessee states that installation of erosion controls, which would be required due to the ground disturbance associated with removing the trees from the right-of-way, would require substantial monitoring and maintenance during the winter and would increase the potential for erosion and sedimentation to degrade streams and wetlands. For these reasons, Tennessee requests that the Commission modify the recommendation in this order such that it is not required to remove felled trees during the winter of 2012-2013 and does not need to install and maintain erosion controls over this extended period. Rather, Tennessee proposes to remove felled trees from the construction workspaces during its proposed construction timeframe (from June through August 2013).

44. We acknowledge that sediment transport off the right-of-way has been a problem on other projects during the winter and has been a source of concern for the Pennsylvania Department of Environmental Protection (PADEP). After further consideration, we agree that the removal of the trees and the increased risk of sedimentation could result in more environmental damage than leaving the trees in place until the start of construction in June. The failure of the erosion control devices during significant storm events or snowmelt could impact the sensitive waterbodies that the PADEP and PAFBC regulations are designed to protect. In addition, these activities would increase the duration of construction impacts on landowners. Therefore, we have removed the time constraint for tree removal from the condition.

45. We recognize that migratory birds in the project area should be protected to the extent practicable. Therefore, we have revised Environmental Condition 11 to ensure Tennessee continues its migratory bird consultation with the FWS and files a Habitat Restoration Plan.

46. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Tennessee's application and supplements, and in compliance with the environmental conditions in the Appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

47. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.²⁷

IV. Conclusion

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

49. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

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

(B) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

(1) Tennessee's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;

²⁷ 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).

(2) Tennessee's completing the authorized construction of the proposed facilities and making them available for service within 18 months of the issuance of this order, in accordance with section 157.20(b) of the Commission's regulations;

(3) Tennessee's compliance with the environmental conditions set forth in Appendix B to this order.

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

(D) Tennessee's proposal to use its currently-effective rates under Rate Schedules FT-A and IT as its initial recourse rates for service on the project facilities is approved. Tennessee's request for a predetermination of rolled-in rate treatment of the MPP Project costs in Tennessee's next general rate case is approved, absent a material change in circumstances.

(E) Tennessee must file not less than 30 but not more than 60 days before the in service date of the proposed facilities an executed copy of each non-conforming agreement as a tariff record reflecting the non-conforming language and a tariff record identifying these agreements as non-conforming agreements, consistent with section 154.112 of the Commission's regulations.

(F) Tennessee must execute firm natural gas transportation contracts equal to the level of service represented in its precedent agreements prior to commencing construction.

(G) The Allegheny Defense Project's request for late intervention is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A**Timely, Unopposed Interventions in Docket No. CP12-28-000**

Atmos Energy Corporation
Atmos Energy Marketing LLC
Calpine Energy Services, L.P.
Chesapeake Energy Marketing, Inc.
Consolidated Edison Company of New York, Inc. and
Orange and Rockland Utilities, Inc.
Constellation Energy Commodities Group, Inc.
National Grid Gas Delivery Companies, et al.
National Fuel Gas Distribution Corporation
New Jersey Natural Gas Company
New York State Electric & Gas Corporation
New York State Public Service Commission
NJR Energy Services Company
Piedmont Natural Gas Company, Inc.
PSEG Energy Resources & Trade LLC
Southwestern Energy Services Company
Tennessee Customer Group²⁸
UGI Distribution Companies

²⁸ Centerpoint Energy Resources Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

Appendix B

Environmental Conditions in Docket No. CP12-28-000

1. Tennessee shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has 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 the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that 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 Tennessee'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 the Certificate and before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee 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 the Order;
 - b. how Tennessee 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. how Tennessee will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Tennessee 's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Tennessee 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 Tennessee'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 the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Tennessee 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 authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 11. **Prior to construction of the project**, Tennessee shall file with the Secretary for review and written approval by the Director of OEP, its Habitat Restoration Plan for migratory birds and the U.S. Fish and Wildlife Service's comments on the plan.