

141 FERC ¶ 61,091  
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.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP12-30-000

ORDER ISSUING CERTIFICATE AND  
GRANTING ABANDONMENT

(Issued November 2, 2012)

1. On December 14, 2011, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authorization to construct, operate, and abandon pipeline, compression, and meter facilities in Pennsylvania, New Jersey, and New York (Northeast Supply Link Project). As discussed below, the Commission will grant the requested authorizations, subject to conditions.

**I. Background and Proposal**

2. Transco is a natural gas company, as defined by section 2(6) of the NGA, that transports natural gas in interstate commerce. Transco's transmission system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. Transco proposes to construct, operate, and abandon pipeline facilities and increase the maximum allowable operating pressure (MAOP) of existing pipeline facilities in order to provide 250,000 dekatherms (Dth) per day of incremental firm transportation service from supply interconnections on its Leidy Line in Pennsylvania to its 210 Market Pool in New Jersey and the Manhattan, Central Manhattan, and Narrows delivery points in New York City. Specifically, Transco proposes to:

- construct 2.22 miles of 42-inch-diameter pipeline loop, extending the existing Leidy Line “D” between Mile Post 128.97 and Mile Post 131.19 in Lycoming County, Pennsylvania (Muncy Loop);<sup>1</sup>
- construct 3.17 miles of 42-inch-diameter pipeline loop, extending the existing Leidy Line “D” between Mile Post 40.50 and Mile Post 43.67 in Monroe County, Pennsylvania (Palmerton Loop);
- construct 6.64 miles of 42-inch-diameter pipeline loop, extending the existing Leidy Line “C” between Mile Post 6.90 and Mile Post 13.54 in Hunterdon County, New Jersey (Stanton Loop);<sup>2</sup>
- replace approximately 0.46 mile of the existing 36-inch diameter Caldwell B Loop in Essex County, New Jersey by abandoning the existing pipeline in place and installing an equivalent length of thicker-walled pipe in a parallel trench (Caldwell B Replacement);
- increase the MAOP of 25.55 miles of the existing 36-inch-diameter Caldwell B Loop, Mainline B, and 72nd Street Lateral in Essex, Passaic, Bergen, and Hudson Counties, New Jersey (Caldwell Uprate);
- increase the MAOP of 1.40 miles of the existing 24-inch/26-inch diameter Long Island Extension pipeline in Richmond County, New York (Long Island Extension Uprate);
- construct a new 25,000 horsepower (hp) electric motor-driven compressor station and associated electrical substation in Essex County, New Jersey (Station 303);<sup>3</sup>

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<sup>1</sup> Leidy Line D extends from Monroe County, Pennsylvania to Transco’s Station 205 in Somerset County, New Jersey.

<sup>2</sup> Leidy Line C extends from Transco’s Station 515 in Luzerne County, Pennsylvania to Hunterdon County, New Jersey.

<sup>3</sup> Transco proposes to install an electric motor-driven compressor unit capable of generating 30,000 hp, but the unit will be certificated and operated at 25,000 hp.

- install an additional 16,000 hp natural gas turbine-driven compressor unit at Transco's existing Compressor Station No. 515 in Luzerne County, Pennsylvania (Station 515);<sup>4</sup>
- modify facilities at Transco's existing Compressor Station No. 505 in Somerset County, New Jersey (Station 505);
- modify various delivery and receipt meter stations in Pennsylvania, New Jersey, and New York; and
- construct various appurtenant underground facilities and minor aboveground facilities, such as valves and valve operators, launchers, and receivers.

4. Transco estimates that the proposed facilities will cost approximately \$341 million. Transco states that the project will be financed initially through short-term loans and funds on hand.<sup>5</sup>

5. Transco held an open season from March 4 to 26, 2010 and executed binding precedent agreements with four shippers for 100 percent of the incremental firm transportation service to be provided by the project. The four shippers are Williams Gas Marketing, Inc. (135,000 Dth per day), Anadarko Energy Services Company (67,500 Dth per day), MMGS Inc. (32,500 Dth per day), and Hess Corporation (15,000 Dth per

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<sup>4</sup> Transco states that it considered the potential recovery of waste heat energy at Compressor Station 515, as discussed in the Interstate Natural Gas Association of America White Paper entitled "*Waste Energy Opportunities for Interstate Natural Gas Pipelines*" issued in February 2008 (*INGAA White Paper*). Transco states that with the addition of the new gas turbine, Station 515 will meet the initial required threshold of total gas turbine station capacity of at least 15,000 hp. However, Transco asserts that based on annual run hour records since 2007, neither the existing nor the new gas turbine at Station 515 will meet the second required threshold of operating at a rate of more than 5,250 hours per year and concludes that waste heat recovery would not be economical at this time. We note that Transco should continue to monitor Compressor Station 515, and should the station meet the waste heat recovery parameters in the *INGAA White Paper*, Transco should post such information on its electronic bulletin board.

<sup>5</sup> See Application at Exhibit K. Transco states it will permanently finance the project as part of its overall, long-term financing program.

day) (Supply Link Shippers).<sup>6</sup> The shippers have agreed to pay negotiated rates. Transco also solicited offers for permanent relinquishment of firm transportation capacity that could be used to provide transportation service to shippers as part of the Northeast Supply Link Project. No shippers offered for permanent relinquish of firm transportation capacity in response to the solicitation.

6. Transco proposes to provide firm transportation service at a new incremental rate pursuant to Rate Schedule Firm Transportation (FT) of its tariff and its blanket certificate under Part 284 subpart (G) of the Commission's regulations. Transco states that these incremental recourse rates are designed to recover the incremental cost of service.

7. Transco proposes an incremental recourse reservation rate for the project's service derived from the applicable incremental cost of service and billing determinants for the project facilities. Transco asserts that it calculated the incremental cost of service using (1) an estimated cost of facilities, (2) engineering estimates for operation and maintenance expenses based on estimates for similar facilities, (3) other cost factors, such as the 15.34 percent pre-tax return underlying the design of Transco's approved settlement rates in Docket No. RP01-245-000, *et al.*, and (4) a 2.79 percent depreciation rate (including negative salvage), which is Transco's currently-effective onshore transmission depreciation rate (including negative salvage).<sup>7</sup> Transco states that the calculated incremental daily reservation recourse rate for the Northeast Supply Link Project will be approximately \$0.79 per Dth.

8. Transco proposes to apply its generally applicable system fuel retention and electric power rates to Northeast Supply Link Project services. Transco states this is warranted because the project facilities will reduce overall fuel use (gas fuel consumption plus the gas equivalent of electric power consumption) attributable to non-project shippers.<sup>8</sup>

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<sup>6</sup> Transco submitted copies of the precedent agreements in Exhibit I and requested that they be treated as privileged information pursuant to section 388.112 of the Commission's regulations. *See* 18 C.F.R. § 388.112 (2012).

<sup>7</sup> The derivation and support for the initial recourse rates are detailed in Exhibit P of Transco's Application.

<sup>8</sup> *See* Application at Exhibit G.

## II. Notice, Interventions, Comments, and Answers

9. Notice of Transco's application was published in the *Federal Register* on January 6, 2012 (77 Fed. Reg. 787). The parties listed in Appendix A filed timely, unopposed motions to intervene.<sup>9</sup>

10. The parties listed in Appendix B filed late motions to intervene. These movants have demonstrated an interest in this proceeding. The untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

11. We received many comments regarding (1) the need for the project and demand for additional gas capacity for the states of New Jersey and New York; (2) Transco's cost estimates; (3) the accuracy of Transco's fuel study; and (4) environmental impacts. In addition, Transco filed an answer to these comments. The comments are addressed below.

## III. Discussion

12. Since Transco proposes to construct, operate, and abandon facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c), (b), and (e) of section 7 of the NGA.<sup>10</sup>

### A. Application of the Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>11</sup> 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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences.

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<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

<sup>11</sup> *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).

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.

14. 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 construction. 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.

15. As discussed above, 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 its existing customers. The Commission has determined that generally where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>12</sup> That is the case here. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

16. The North Carolina Utilities Commission (North Carolina Commission) contends that further analysis is necessary to determine whether the Commission should hold Transco at risk for the under-recovery of project costs. As discussed below, we find that Transco's proposed incremental rates are properly designed based on billing determinants that reflect the full contract project's capacity. Establishing these incremental rates for the project service is sufficient to prevent existing shippers from subsidizing the project. Accordingly, we find no additional at-risk conditioning is necessary.

17. We also find that the proposal will not degrade service to Transco's existing customers. The project will allow Transco to provide additional transportation services while continuing to meet existing firm obligations. In addition, there will be no adverse impact on existing pipelines in the region or their captive customers because the proposal is not intended to replace existing customers' service on other existing pipelines. Further,

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<sup>12</sup> *E.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

the project creates capacity for the transportation of market area production and will make additional supply options available for shippers connected to Transco's system. Also, no pipeline company has protested Transco's application.

18. As discussed in greater detail below, and in the EA, the proposed project will disturb approximately 339.7 acres of land. In order to minimize impacts on landowners, Transco will construct the proposed facilities primarily on existing rights-of-way and areas adjacent to existing right-of-ways. The new Compressor Station 303 will be constructed on property owned by Transco and all other compression-related activities will take place entirely within existing compressor station facilities. Accordingly, we find that Transco has designed the project to minimize any adverse impacts on landowners and surrounding communities.<sup>13</sup>

19. Andrew Shelofsky (Mr. Shelofsky) and the Township of Nutley, New Jersey (Township of Nutley) raise concerns about the evidence of demand for the project's capacity, claiming that Transco does not use consistent data to demonstrate that there is a market demand for the project. Mr. Shelofsky asserts that the source of the supporting data has changed from (1) the Energy Information Administration, referenced in Transco's pre-filing documents, to (2) the New York State Energy Plan, referenced in Transco's Resource Report 1, to (3) New Jersey Governor Christie's Draft Energy Master Plan, referenced in the EA. Mr. Shelofsky also contends that Transco did not refer to New Jersey Governor Christie's Draft Energy Master Plan in any document submitted in this docket.<sup>14</sup> Other commenters question the need for the project, asserting that the demand for gas in the New Jersey and New York area is decreasing and will continue to do so.

20. Here, as set forth above, all of the capacity of the proposed project is subscribed under precedent agreements. This is strong evidence of market demand. As discussed in our Certificate Policy Statement, service commitments for new capacity constitute "important evidence of demand for a project." Consequently, when "an applicant has entered into contracts or precedent agreements for the proposed capacity," we take this as

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<sup>13</sup> Concerns raised by commenters regarding the potential impact of the project on property values are addressed below in the environmental section of the order.

<sup>14</sup> We note that Transco referred to Governor Christie's Plan in its response to scoping meeting comments dated August 29, 2011, in the pre-filing phase of this proceeding in Docket No. PF11-4-000. We further note that, although such references are helpful in describing the need for a proposed project, the Commission has not relied on them in certificating Transco's proposal.

“significant evidence of demand for the project.”<sup>15</sup> Thus, we conclude that Transco has provided adequate support of market demand for its proposed project.<sup>16</sup>

21. Mr. Shelofsky and the Township of Nutley note that over 50 percent of the contracted demand is with Transco’s affiliate, Williams Gas Marketing. Marketing affiliates are subject to the Commission’s Standards of Conduct pursuant to 18 C.F.R. Part 358, which prohibits discriminatory behavior between the pipeline and its affiliate, requires the affiliate to maintain separate operations and personnel, and requires a transmission provider’s employees to function independently of its marketing function employees.<sup>17</sup> Absent evidence of affiliate abuse, we see no reason not to view marketing affiliates like any other shipper for purposes of assessing the demand for capacity, especially since the establishment of incremental rates will ensure the project will proceed without subsidization from existing customers.

22. Some commenters contend that any increase in demand can be met by existing infrastructure. Specifically, Mr. Shelofsky states that Transco’s historical data from Exhibit Z-1 shows that Transco has available capacity within Zone 6. Transco explains that the graph included in Exhibit Z-1 of the application represents the lowest to highest volumes delivered on its system in Zone 6 during calendar year 2010,<sup>18</sup> but that the highest volumes delivered represent peak day usage on its system in 2010 and not the level of contracted capacity in Zone 6. Transco asserts that, while its customers do not

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<sup>15</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748. *See, e.g., Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233, at P 33 (2011), which found that the applicant had not sufficiently demonstrated need for its particular project where the applicant did not conduct an open season or submit precedent or service agreements for the project’s capacity and provided only vague and generalized evidence of need for natural gas at the regional and national level. The Commission held that “vague assertions of public benefits are not sufficient to establish need for a particular project, especially in the face of identified adverse impacts.” (citations omitted)

<sup>16</sup> Commenters also suggest that the gas transported by the proposed project is ultimately going to be exported. There is no indication in the record that any of the customers that have subscribed to the capacity created by the proposed facilities contemplate using that capacity to export natural gas. In any event, no gas may be exported without prior NGA section 3 authorization from the Department of Energy (DOE). That DOE proceeding would be the appropriate forum to address the concerns of the commenters.

<sup>17</sup> 18 C.F.R. §§ 358.4 and 358.5 (2012).

<sup>18</sup> See Exhibit Z-1 at p. 3.

use 100 percent of their contracted capacity during all 365 days of the year, all of its capacity is fully contracted to meet peak demands of public utilities, power generators, industrial customers, and other gas users at such time the customers require it.

23. Although a pipeline is constructed to meet contracted peak demands during periods of 100 percent load conditions, customers are not required to, and rarely do, use 100 percent of their contracted capacity every day of the year. This means, as illustrated in Exhibit Z-1, that on any given day there may well be unutilized capacity in a pipeline. However, while such capacity can be used by the pipeline to satisfy additional demand on an interruptible basis, it is not available to provide additional services on a firm basis. Therefore, in order for Transco to provide the additional firm transportation service contracted for by the Supply Link project shippers, it must design and install additional facilities to create sufficient capacity to meet its firm contractual obligations to the new shippers without impairing its ability to meet the firm contractual entitlements of its existing customers.

24. The proposed Supply Link Project will increase the capacity of Transco's system between its Leidy Line in Pennsylvania and its 210 Market Pool in New Jersey and delivery points in New York City. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of Transco's proposal, subject to the conditions discussed below. Further, the Commission also finds that the public convenience or necessity permit Transco's abandonment of approximately half a mile of pipeline in Essex County, New Jersey as part of the Supply Link Project.

## **B. Rates**

### **1. Incremental Rate**

25. Transco proposes an incremental Zone 6 daily reservation rate of \$0.79074 per Dth based on a \$72,155,208 cost of service, 91,250,000 Dth of incremental billing determinants, and approximately \$341 million of facilities' cost. The proposed cost of service reflects a 2.79 percent depreciation rate, including negative salvage, which is the onshore transmission depreciation rate approved by the Commission in Docket No. RP06-569-000, *et al.*<sup>19</sup> The cost of service is based on a 15.34 percent pre-tax rate

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<sup>19</sup> *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008). The settlement in Docket No. RP06-569 was a "black box settlement," which stated the 2.79 percent settlement depreciation rate, including negative salvage, but did not specify a rate of return or most other cost of service components.

of return, based on Transco's approved settlement rates in Docket No. RP01-245-000, *et al.*<sup>20</sup>

26. The Certificate Policy Statement presumes an incremental rate for firm service is appropriate when the incremental rate would be in excess of the maximum system rate.<sup>21</sup> Transco's proposed \$0.79074 per Dth incremental recourse reservation rate is higher than its current Zone 6 to Zone 6 reservation rate of \$0.11892 per Dth under Rate Schedule FT. Thus, the Commission will approve Transco's proposed incremental FT recourse rate.

27. Transco's proposed incremental rate design reflects only the incremental costs associated with the Supply Link Project. Consistent with Commission policy, the incremental rates do not reflect the reallocation of costs related to existing facilities or other common costs.<sup>22</sup> The North Carolina Commission asserts that since most of the expansion capacity will result from the pressure uprate of 25.55 miles of existing, not new, facilities, service to the incremental shippers will be piggy-backing off facilities whose costs are recovered through rates paid by the existing shippers. For this reason, the North Carolina Commission contends that the incremental rates charged to expansion shippers should also reflect some of the fixed costs of the existing facilities. An NGA section 7 proceeding certifying new facilities is not a proper forum to analyze the allocation of existing costs between the pipeline's existing and expansion customers because the rates for existing services can only be changed in a section 4 or 5 rate proceeding. Issues regarding cost allocation,<sup>23</sup> including whether any additional system

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<sup>20</sup> *Transcontinental Gas Pipe Line Corp.*, 123 FERC ¶ 61,040 (2008).

<sup>21</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744 (“[w]hen a pipeline proposes to charge a cost-based incremental rate (establishing separate costs-of-service and separate rates for the existing and expansion facilities) higher than its existing generally applicable rates, the Commission usually approves the proposal.”).

<sup>22</sup> *Trailblazer Pipeline Co.*, 106 FERC ¶ 63,005, at P 112 (2004) (stating that “nowhere in Commission pronouncements has the Commission required the assignment of existing facility costs to expansion customers.”).

<sup>23</sup> See *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,903 (2001) (*Trailblazer*) (“rates of existing customers should not change because a pipeline builds expansion facilities to serve new customers...”); see also Certificate Policy Statement, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

costs should be reallocated to Transco's Northeast Supply Link incremental rate, may be addressed in Transco's next NGA section 4 rate proceeding.<sup>24</sup>

## 2. Project Cost Estimates

28. Several intervenors question Transco's estimated project costs. Specifically, Mr. Shelofsky questions Transco's estimates in various cost categories included in Exhibit K. Mr. Shelofsky contends that if the projected costs are higher than the actual costs, customers will ultimately pay more for the gas.<sup>25</sup>

29. In response to the Commission staff's May 21, 2102 data request, Transco provided additional information regarding its estimate of project costs. Transco explains that its cost estimates are based on its past experience constructing similar facilities in the same general geographical area as the proposed construction and an assessment of the current and future market for such costs. There is no evidence suggesting that any of Transco's resultant estimates are unreasonable.<sup>26</sup> Moreover, the Commission's regulations require pipelines to account separately for the construction costs of incrementally-priced expansion capacity and to compare actual to projected costs in their NGA section 4 general rate proceedings.<sup>27</sup> This accounting will protect existing shippers from cost overruns and from subsidization that might result from under collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project. Such an accounting will allow the Commission to identify any significant changes in circumstances that would warrant a re-examination of the rate treatment approved in the certificate proceeding in which the expansion project was approved.

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<sup>24</sup> We note that on August 31, 2012, Transco filed a general section 4 rate case in Docket No. RP12-993-000.

<sup>25</sup> Mr. Shelofsky also asserts that if costs are understated, contract shippers may discontinue their contracts. Mr. Shelofsky provides no support for this assertion.

<sup>26</sup> See *Northern Border Pipeline Company*, 92 FERC ¶ 61, 243 at 61,775 (2000) ("When processing a certificate application, the Commission looks at the cost estimate generally to identify any category for which the costs appear unreasonable. Unless the Commission's general review suggests that the cost estimate is unreasonable or a party can specifically demonstrate that the estimate is unreasonable, the Commission accepts the estimate proffered by the applicant.")

<sup>27</sup> 18 C.F.R. § 154.309 (2012).

### 3. System Fuel Rates

30. Transco proposes to assess Supply Link shippers its generally applicable fuel retention and electric power charges under Rate Schedule FT. Transco asserts that the charges are based on Exhibit Z-1, "Evaluation of System Fuel Consumption" (Fuel Study), which provides details of its operational modeling and indicates that the proposed facilities will reduce the overall fuel use (i.e., gas fuel consumption, plus the gas equivalent of electric power consumption) of non-project shippers.<sup>28</sup> According to Transco's Fuel Study, for the 10 historical flow study days that are representative of the range of system operating conditions during 2010,<sup>29</sup> the average change in fuel allocated to existing system customers is -7.31 percent.<sup>30</sup>

31. Mr. Shelofsky contends that the average should be adjusted to account for the differences in the modeled fuel used on each of the 10 study days. Mr. Shelofsky reasons that a modest increase in the percentage of fuel use on high fuel use days (e.g., December 10, 2010) outweighs the slight decrease in the percentage of fuel use on low fuel use days (e.g., August 20, 2010). For example, Mr. Shelofsky asserts that on December 6, 2010, the estimated increase in compressor fuel consumption is approximately 1.49 MMscf/day, or 3.59 percent, which offsets the decrease in estimated compressor fuel use for two other study days (e.g., -0.95 MMscf/day, or -8.71 percent, on July 12, 2010 and -0.55 MMscf/day, or -4.08 percent, on August 20, 2010). Mr. Shelofsky argues that the average change in fuel allocated to existing shippers is approximately -5.48 percent, and that Transco will spend approximately \$560,932 more in increased annual compressor fuel use than it estimates. Mr. Shelofsky asks the Commission to require Transco to use all 365 days of system fuel consumption to determine whether Transco's estimated costs savings for existing customers are accurate.<sup>31</sup>

32. The estimates of the average change in fuel allocated to existing system customers under Transco's and Mr. Shelofsky's calculations are -7.31 percent and approximately -

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<sup>28</sup> See Exhibit Z-1 at p. 1.

<sup>29</sup> Transco states that the ten representative flow study days were selected at evenly spaced intervals, every tenth percentile.

<sup>30</sup> See Exhibit Z-1 at p. 2.

<sup>31</sup> Mr. Shelofsky also contends that Transco should provide studies using 365 days of system fuel consumption for all alternatives to support its determination that the location of the proposed loops and compressor stations are the most cost-effective option for existing customers. The many factors considered in reviewing alternative locations for the project are addressed in the environmental section of this order.

5.48 percent, respectively. Both estimates indicate that total system fuel consumption would decrease and that the proposed expansion facilities would benefit existing system customers by reducing their average fuel rate.<sup>32</sup> Since existing system customers will not incur increased fuel expenses, we will grant Transco's request to charge its generally applicable system fuel retention and electric power rates to the Supply Link shippers.<sup>33</sup>

#### 4. Negotiated Rates

33. Transco states that it will provide service to the Supply Link shippers under negotiated rate agreements. Transco must file all negotiated rate contracts or numbered tariff records describing the negotiated rate agreements associated with this project in accordance with the Alternative Rate Policy Statement and the Commission's negotiated rate policies.<sup>34</sup>

#### C. Engineering

34. Our engineering analysis shows that Transco has properly designed the project to increase Transco's capacity by 250,000 Dth/d from receipt points on the Leidy Line to the 210 Market Pool in New Jersey and the Manhattan, Central Manhattan, and Narrows delivery points in New York City. Transco's firm transportation service for the Supply Link shippers will not adversely impact Transco's ability to maintain its contractual obligations to either its expansion or existing shippers.

35. Congressman Leonard Lance questions how the Stanton Loop could add more capacity to the system without adding a third pipeline for the remaining length of the

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<sup>32</sup> Although Transco's total fuel consumption increases as a result of the expansion, the addition of 250,000 Dth per day of new capacity results in a net reduction in the overall fuel rate.

<sup>33</sup> See, e.g., *Transcontinental Gas Pipeline Co. LLC*, 130 FERC ¶ 61,010, at P 10 (2010).

<sup>34</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

pipe. A common way to increase system capacity is to add pipeline looping facilities. Adding a loop to a segment of pipe increases capacity by increasing the amount of space the transported gas can expand into throughout the entire length of the pipe. The length and size of the pipeline loop used determines the total amount of additional volume created and is dictated by the incremental increase in capacity sought.

36. Natural gas expands (or contracts) to occupy whatever shape and volume that is created by the solid barriers that contain it -- in this case, a pipe. Thus, it is not necessary for a loop to extend along the entire length of a pipeline to increase that pipeline's overall capacity. A pipeline loop will increase the effective volume of the entire pipe, which will reduce the pressure losses associated with transporting additional gas.

37. Transco conducted hydraulic studies to determine how much additional volume was needed to achieve the required capacity increase. Transco chose to extend its existing 42-inch diameter pipeline loop and then determined what length of 42-inch diameter pipe was needed to create the amount of additional volume needed to achieve the required capacity increase, while maintaining operational pressures necessary to meet existing contractual delivery obligations. Accordingly, Transco proposes to extend the loop on its Leidy Line for 6.62 miles by constructing the Stanton Loop. Based on our staff's analysis, we find that Transco properly designed and sized the Stanton Loop to accommodate the proposed new service.

#### **D. Environment**

38. Commission staff began its environmental review of the Northeast Supply Link Project following approval for Transco to use the pre-filing process on March 2, 2011, in Docket No. PF11-4-000. As part of the pre-filing review, the staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) on July 1, 2011. The NOI was published in the *Federal Register*<sup>35</sup> and mailed to over 3,200 parties including federal, state, and local government officials; agency representatives; conservation organizations; Native American tribes; local libraries and newspapers; and affected property owners. Staff held four public scoping meetings in communities near the proposed facilities to provide agencies and the general public with an opportunity to learn more about the project and to comment on environmental issues that should be addressed in the Environmental Assessment (EA). The four scoping meetings were attended by a total of 93 individuals.<sup>36</sup>

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<sup>35</sup> 76 Fed. Reg. 40,717 (July 11, 2011).

<sup>36</sup> The public scoping meetings were held in Hughesville and Bartonsville, Pennsylvania, and Clinton and East Hanover, New Jersey, between July 18 and 21, 2011, respectively.

39. On September 1, 2011, Commission staff issued a Notice of Onsite Environmental Review to evaluate portions of the Stanton Loop. The onsite environmental review was conducted on September 21, 2011 and based on previously received scoping comments, included segments of the Stanton Loop in Franklin and Clinton Townships in Hunterdon County, New Jersey. At the request of officials from Union Township in Hunterdon County, Commission staff attended a site visit sponsored by Union Township to review portions of the Stanton Loop in Union Township on December 5, 2011. These onsite environmental reviews were attended by approximately 60 affected property owners, other interested individuals, township officials, and a representative from the (New Jersey Department of Environmental Protection (NJDEP)).

40. At the request of local officials, Commission staff attended public meetings held by the Township of Nutley on September 19, 2011 and Clinton Township on September 21, 2011. Approximately 130 affected landowners and other interested parties attended these meetings.

41. We received written and verbal comments during the public scoping process from affected landowners, concerned citizens, government agencies, and other organizations. The primary issues raised during scoping were questions concerning the project's purpose and need; the request that the Commission complete an Environmental Impact Statement (EIS) rather than an EA; impacts associated with development of the Marcellus Shale;<sup>37</sup> impacts on the Highlands Region of New Jersey and other sensitive or protected areas; potential impacts on groundwater, surface water, soil, and wildlife; construction and operational safety; and impacts on nearby residences.

### **1. Pre-EA Scoping Comments**

42. Potentially affected landowners, local governments in New Jersey, and non-governmental organizations, including the New Jersey Chapter of the Sierra Club (Sierra Club), questioned the need for the project. Generally, they assert that need was being driven by producers of natural gas from the Marcellus Shale rather than specific demand for natural gas, and that demand may be declining in the northeastern United States.<sup>38</sup> The EA describes the purpose and need of the project for purposes of defining the scope of the alternatives analysis. The EA also notes that Transco has entered into binding

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<sup>37</sup> The unconventional development and production of natural gas resources in shale formations has increased in the United States in recent years. In Pennsylvania, this development is occurring primarily in the Marcellus Shale, which extends from New York through Pennsylvania and into West Virginia and Ohio. EA at 2-140.

<sup>38</sup> Citing from the U.S. Energy Information Administration's *International Energy Outlook 2010*.

precedent agreements with shippers for the entire capacity of the project.<sup>39</sup> As discussed above, that is a sufficient showing of market need for the project.<sup>40</sup>

43. Individuals, local governments, including Union and Clinton Townships, and non-governmental organizations, including the Sierra Club and the New Jersey Highlands Coalition, contended that the project would result in significant impacts on environmental resources and that we should prepare an EIS. The Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) do provide that an EIS "will normally" be prepared for "major pipeline construction using rights-of-way in which there is no existing natural gas pipeline." However, as explained in the EA, the regulations go on to provide that "[i]f the Commission believes that a proposed action ... may not be a major federal action significantly affecting the quality of the human environment, an EA, rather than an EIS, will be prepared first."<sup>41</sup> Transco proposes to (1) construct a new, 12.0-mile long, 42-inch diameter pipeline loop in three separate segments in Hunterdon County, New Jersey and Lycoming and Monroe Counties, Pennsylvania that will be located within or adjacent to existing rights-of-way for 98 percent of its length; (2) construct one new compressor station sited in an industrial area; (3) uprate existing pipeline; and (4) modify existing above-ground facilities. The Commission's years of experience with NEPA implementation for pipeline projects indicates that such a project normally would not fall under the "major" category for which an EIS is automatically prepared.<sup>42</sup>

44. The Council on Environmental Quality (CEQ) regulations implementing NEPA state that one of the purposes of an EA is to assist agencies in determining whether to prepare an EIS. Here, Commission staff prepared an EA to determine whether the Northeast Supply Link Project would have a significant impact, necessitating the

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<sup>39</sup> EA at 1-10 to 1-11.

<sup>40</sup> *Supra* PP 20-21.

<sup>41</sup> EA at 1-12 (citing 18 C.F.R. § 306(b) (2011)).

<sup>42</sup> *See, e.g., Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,140 (2010) (EA issued for a project consisting of 127.4 miles of 30-inch-diameter pipeline loops in Pennsylvania and New Jersey); *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011) (EA issued for a project which included a gas storage field on 2,050-acre site and associated 61.6-mile, 36-inch-diameter pipeline in Utah); *Colorado Interstate Gas Co.*, 131 FERC ¶ 61,086 (2010) (EA issued for a project which included two new 16-inch-diameter pipeline laterals totaling 118 miles in length in Colorado); *Equitrans L.P.*, 117 FERC ¶ 61,184 (2006) (EA issued for a project which included 68 miles of new 20-inch-diameter pipeline in Kentucky).

preparation of an EIS. As explained below, the EA concludes, and we agree, that approval of the Northeast Supply Link Project would not constitute a major federal action significantly affecting the quality of the human environment.<sup>43</sup> Thus, an EIS is not required.<sup>44</sup>

45. The Sierra Club and others contend that the project would encourage development of the Marcellus Shale, and that the cumulative impact of this development must be fully considered in the review of the Northeast Supply Link Project. The EA considers the general development of Marcellus Shale reserves in proximity to the project within the context of cumulative impacts in the project area and states that a more specific analysis of impacts associated with Marcellus Shale development is outside the scope of the EA because the exact location, scale, and timing of future exploration and production activities are unknown.<sup>45</sup> Moreover, the EA concludes that the potential cumulative impacts of Marcellus Shale development are neither sufficiently causally related to the project nor reasonably foreseeable to warrant the comprehensive consideration of those impacts in our staff's analysis.<sup>46</sup> As discussed below, the EA concludes, and we agree, that only small cumulative effects are anticipated when the impacts of the project are added to the impacts of other identified projects in the immediate area, including development of the Marcellus Shale.

46. Individuals, the Sierra Club, and the New Jersey Highlands Coalition raised concerns regarding project impacts on the New Jersey Highlands Region, which is defined under New Jersey's Highlands Water Protection and Planning Act (Highlands Act), and consists of a central Preservation Area surrounded by a Planning Area. The Stanton Loop crosses the Planning Area only. The project does not cross the more highly-regulated Preservation Area. As explained in the EA, the NJDEP established the Highlands Council to develop and oversee guidelines for adherence to the rules and

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<sup>43</sup> EA at 4-1. Under 40 C.F.R. § 1508.18 of the CEQ's regulations, "a 'major federal action' includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly. (Sec. 1508.27)." "Significantly" requires consideration of both the context and intensity of the project. *See* 40 C.F.R. § 1508.27 (2012).

<sup>44</sup> CEQ 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 (2011).

<sup>45</sup> EA at 2-140.

<sup>46</sup> *Id.*

regulations of the Highlands Act.<sup>47</sup> Within the Planning Area, the Highlands Council regulates and approves all proposals for major developments. As stated in the EA, the Highlands Council determined that the Northeast Supply Link Project does not require an exemption from the provisions of the Highlands Act. The EA discusses potential project impacts within the Highlands Region on land use, ground and surface waters, wetlands, invasive species, soil and erosion, and traffic. The EA states that Transco would minimize impacts on resources in the Highlands Region by implementing its project-specific Erosion and Sediment Control Plan (E&SCP), Upland Erosion Control, Revegetation, and Maintenance Plan (Plan), and Wetland and Waterbody Construction and Mitigation Procedures (Procedures). As stated in the EA, Commission staff reviewed Transco's construction and restoration plans and found them acceptable. The EA also states that Transco has committed to continuing coordination with the NJDEP for other construction and mitigation measures within the Highlands Region. By avoiding the more sensitive Preservation Area, locating the Stanton Loop within the existing pipeline right-of-way, implementing project-specific construction and restoration plans, and continuing to work with the NJDEP, we conclude that the project will not result in significant impact on resources within the Highlands Region.

47. In addition to the Highlands Region, commentors expressed concern regarding project impacts on other special interest or recreational areas, including properties enrolled in the Green Acres program in New Jersey. As explained in the EA, construction of the project would affect approximately 7.1 acres within 9 separate Green Acres properties, and that approximately 2.6 acres would be retained for operation of the project facilities.<sup>48</sup> Three Green Acres parcels, including the South Branch Reservation, would be avoided by use of the horizontal directional drill (HDD) method. Thus, no impact on these parcels is anticipated. For other Green Acre properties, Transco committed to mitigate for project impacts in accordance with the requirements of the Green Acres program, which include identifying land for preservation and public use and may have other requirements imposed by New Jersey state agencies charged with regulating activities within Green Acres parcels. The EA describes project impacts on other recreational and special interest areas crossed by the project and concludes that, based on the level of impact and Transco's construction, restoration, and mitigation measures, project impacts on these areas would not be significant.<sup>49</sup> We concur.

48. Individuals, non-governmental organizations, and state agencies raised concern regarding adverse impacts on natural resources, primarily groundwater, surface water,

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<sup>47</sup> EA at 2-76.

<sup>48</sup> EA at 2-78.

<sup>49</sup> EA at 2-75 through 2-82.

soil, and wildlife resources. The EA examines project impacts on these and other resources, and describes the mitigation measures that Transco would implement to avoid or reduce impacts, as well as the local, state, and federal agency consultations and required permits for the project.

49. Specifically, commentors were concerned that construction and operation of the project could impact groundwater resources through the introduction of contaminants or sediment, physical alteration of the water table, or soil compaction and vegetation clearing in recharge areas. Also, commentors voiced concern regarding the potential for the project to impact private water wells. The EA explains that because groundwater resources in the project area are largely below the expected pipeline trench excavation depth, construction-related impacts on groundwater, such as increased turbidity or fluctuations in water table elevation, would be minor, temporary, and localized to the construction area.<sup>50</sup> Transco's proposed use of the HDD or direct pipe construction techniques could also cause similar, localized impacts on groundwater quality due to the use of drilling mud, which is primarily composed of bentonite, a naturally occurring, non-toxic clay mineral.

50. Transco will avoid or minimize potential impacts on groundwater quality, including in recharge areas, through implementation of its construction and restoration plans, which will reduce sedimentation in nearby surface waters, minimize or repair soil compaction, and encourage revegetation in the right-of-way. Transco will also implement a Spill Prevention, Control, and Countermeasures (SPCC) plan and an Unanticipated Discovery of Contamination Plan that include specific measures to be implemented in the event of a hazardous material spill or the discovery of pre-existing contamination during construction.

51. The EA identifies wells and springs within 150 feet of the construction right-of-way based on public databases. As stated in the EA, Transco would verify the exact location of nearby wells through the civil survey process and landowner communication, and has committed to repair or replace any wells that are permanently damaged by the project based on pre- and post-construction water quality and well yield test results obtained with landowner permission. The EA recommends that Transco file a report with the Commission detailing any wells damaged by construction and how they were repaired or replaced, and discussion and resolution of any other complaints concerning well yield or water quality.<sup>51</sup> We have incorporated this recommendation as Environmental Condition 12 of this Order. We concur with the EA's conclusion and believe that the

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<sup>50</sup> EA at 2-12.

<sup>51</sup> EA at 2-13.

project will not result in any significant long-term or permanent impacts on groundwater resources or users of groundwater in the area.

52. Commentors were similarly concerned about project impacts on surface water resources, mentioning the South Branch Raritan River, an important source of drinking water in the region that would be crossed by the Stanton Loop. Transco will use the HDD method to cross the South Branch Raritan River to avoid impacts on the river. The EA explains that HDD drilling mud could unexpectedly enter the South Branch Raritan River, causing localized turbidity and sedimentation, and potential mortality of species that are unable to leave the affected area.<sup>52</sup> The EA also includes in Appendix E site-specific contingency plans that describe the measures that Transco would implement should an HDD drilling mud release occur to the land surface or a waterbody. Commission staff reviewed these plans and found that they would reduce the impact of an inadvertent release of drilling mud. We concur and find Transco's proposed HDD construction method and drilling mud release contingency plan for the South Branch Raritan River to be protective of water quality within the river.

53. Commentors were concerned regarding potential impacts on Aquashicola Creek near milepost (MP) 40.6 on the Palmerton Loop. Aquashicola Creek is identified as a state fishery of concern and wetlands at the crossing location were identified by the U.S. Fish and Wildlife Service (FWS) as documented habitat for the federally threatened bog turtle. In addition, the area of the Aquashicola Creek crossing is enrolled in the Natural Resource Conservation Service (NRCS) Wetland Reserve Program (WRP), although Transco's existing pipeline easement across the area predates the WRP easement. As described in the EA, Transco would cross Aquashicola Creek and the adjacent bog turtle habitat by the direct pipe drilling method, which will result in placement of the Palmerton Loop approximately 50 to 55 feet below the creek bed and avoid construction outside of Transco's existing easement within the WRP easement.<sup>53</sup> Commission staff, along with the FWS and NRCS, reviewed Transco's construction plan, including a site-specific Direct Pipe Contingency Plan to monitor for and respond to an inadvertent release of drilling fluid, and found them protective of the resources present at Aquashicola Creek.

54. We also received comments concerning potential impacts on other sensitive waterbodies in the project area including Muncy Creek near MP 130.3 of the Muncy Loop and Cramer's Creek near MP 10.4 of the Stanton Loop. The EA identifies each waterbody that would be affected by the project and describes in detail the methods that Transco would implement to cross and restore each crossing.<sup>54</sup> Transco would also

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<sup>52</sup> EA at 2-19.

<sup>53</sup> EA at 1-23 and 2-17.

<sup>54</sup> EA at 2-15.

conduct the waterbody crossings at a time designated by either the appropriate state agency or Transco's Procedures as protective of aquatic resources. Because the waterbody crossings will be completed in accordance with approved crossing methods, Transco's Procedures, and other site-specific measures that may be required by state permitting agencies or the U.S. Army Corps of Engineers (COE), we agree with the EA that project impacts on waterbodies will be minor and temporary.

55. Commentors raised concerns regarding project impacts on soils, specifically the potential for increased erosion and sedimentation into nearby waterbodies and soil compaction to occur. The EA describes the characteristics of each type of soil that occurs in the project right-of-way, including susceptibility to erosion and compaction. The EA also explains that Transco would implement its Plan, Procedures, and E&SCPs to minimize soil impacts including the use of specific devices to control erosion, sedimentation, and compaction during construction.<sup>55</sup> Transco's E&SCPs, in particular, include detailed plans to control erosion and sedimentation from the project, and were developed in consultation with the soil conservation offices of each county crossed by the project. In addition, the EA describes the permanent erosion and sedimentation control and compaction reduction measures that Transco would install or implement after construction, and the efforts that would be undertaken to encourage and monitor for successful revegetation of affected areas. By implementing the approved construction and restoration methods, we concur with the conclusions in the EA that the project will not result in significant erosion, sedimentation, compaction, or other adverse impacts on soils.

56. Individuals, local governments, non-governmental organizations, and state and federal wildlife management agencies raised concerns about project impacts on protected wildlife species. These comments primarily concerned potential impacts on the federally listed bog turtle and Indiana bat, migratory birds, and state-listed species of concern. Some commentors were also concerned about the potential impact of forest fragmentation on wildlife. Each of these issues is addressed in the EA and discussed below.

57. Based on agency consultation and field survey results, Transco identified one location on the Stanton Loop and one location on the Palmerton Loop with previously documented bog turtles. As discussed above, the occupied bog turtle habitat at Aquashicola Creek on the Palmerton Loop will be avoided by implementation of the direct pipe method of installation, which was developed in consultation with the FWS and NRCS. In consultation with the FWS, Transco agreed to implement a detailed plan consisting of 15 site-specific construction and monitoring methods to minimize impacts on the bog turtle at the Stanton Loop location.

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<sup>55</sup> EA at 2-5 to 2-9.

58. The Indiana bat can be found along the entire route of the proposed project. Based on consultation with the FWS, Transco agreed to conduct tree clearing within the dates identified by the FWS<sup>56</sup> and to restore up to 8.7 acres of forest under various programs in New Jersey to include trees favorable to Indiana bat.

59. The EA also discusses that surveys completed for the federally endangered northeastern bulrush did not identify any potential habitat or individuals. In letters dated July 11 and 12, 2012, and subsequent e-mail correspondence, the FWS concluded that, based on the results of surveys and Transco's proposed construction and mitigation measures, the project was not likely to adversely affect the bog turtle, Indiana bat, and northeastern bulrush. In the EA, Commission staff agreed with these determinations.<sup>57</sup> Thus, consultation under section 7 of the Endangered Species Act is complete with the FWS.

60. The EA explains that the greatest potential to impact migratory birds would occur if project construction were to occur during the nesting season. Potential impacts on migratory birds associated with project operation are also described in the EA and are generally associated with the loss of forest habitat.<sup>58</sup> Transco agreed to adopt FWS-recommended vegetation clearing windows during construction and would construct and restore the affected project area in accordance with its Plans, Procedures, and other agency requirements. In addition, considering that the project largely involves the incremental expansion of an existing maintained right-of-way, we agree with the EA that project impacts on migratory birds and their habitat will be minimal. As previously stated, the FWS, with specific expertise in the protection of migratory birds, cooperated in preparing the EA.

61. A number of commentors raised the potential for the project to result in forest fragmentation and edge effects, which can have adverse impact on certain wildlife species. The EA explains that Transco would minimize potential impacts associated with habitat fragmentation and edge effects would be minimized by locating the project loops with Transco's existing, maintained right-of-way for approximately 98 percent of the project's length, resulting in a typical, incremental expansion of the operating right-of-way of only 20 feet.<sup>59</sup> Transco would also implement provisions in its Plan and other

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<sup>56</sup> Transco will clear vegetation from September 1 to March 31 in Pennsylvania and August 1 to March 14 in New Jersey.

<sup>57</sup> EA at 2-50 through 2-52.

<sup>58</sup> EA at 2-44.

<sup>59</sup> EA at 2-38.

mitigation measures that may be required by state or federal permitting agencies to minimize the effect of construction on forest habitat and to promote the reestablishment of vegetative cover in the right-of-way.

62. The EA explains that Transco consulted with state agencies concerning state-listed species of concern. Transco conducted the majority of field surveys required by state agencies and committed to implement certain measures during construction as recommended by the state agencies to minimize impacts on state-listed species. Based on Transco's field survey results and mitigation measures developed in consultation with state agencies, the EA concludes that adverse impacts on most state-listed species would be avoided or minimized.<sup>60</sup> However, the EA recommends that Transco file any outstanding survey results for state-listed species and identify any additional mitigation measures developed in consultation with the state agencies prior to the start of construction. Thus, we have included this recommendation as Environmental Condition 14 of this Order.

63. Numerous affected landowners and local officials repeatedly expressed concerns regarding the safety of Transco's system and construction of the project. The safety and reliability of the interstate natural gas transmission system in general, and the Northeast Supply Link Project in particular, is discussed in detail in the EA.<sup>61</sup> As explained in the EA, the U.S. Department of Transportation (DOT) has exclusive authority to promulgate federal safety standards used in the transportation of natural gas, and the Commission's regulations require that an applicant requesting authorization to construct facilities certify that it will design, install, inspect, test, construct, operate, replace, and maintain proposed facilities in accordance with federal safety regulations. The Commission accepts this certification and does not impose additional safety standards other than the DOT standards. Transco has certified that the project will be designed, constructed, operated, and maintained to meet or exceed the DOT's *Minimum Federal Safety Standards* in 49 C.F.R. Part 192. Because of its expertise in pipeline safety and the many comments we received regarding safety issues, the DOT participated as a federal cooperating agency in preparing the EA and is aware of local safety concerns.

64. Numerous affected landowners, other individuals, and Clinton and Franklin Townships expressed concern that constructing the Stanton Loop in proximity to Transco's existing, older pipelines could affect the integrity and safety of the existing pipelines. Specifically, commentors identified the practices of implementing crossovers of new and existing pipelines, working over active pipelines, and installing new large-

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<sup>60</sup> 2-54 through 2-59.

<sup>61</sup> EA at 2-125 to 2-136.

diameter pipelines with less than a typical offset of 25 feet from an existing pipeline as being of concern. The EA describes each of these practices.<sup>62</sup>

65. The EA explains that, in response to homeowner concerns, Transco revised its construction plan for the segment of the Stanton Loop in the Seven Springs Road neighborhood, which originally included overland trenching and two crossovers of the existing pipeline system. Transco will now install the Stanton Loop in the Seven Springs Road neighborhood by the HDD method, eliminating overland crossovers of the existing pipelines. We agree with the EA's conclusion that the Seven Springs Road HDD will substantially reduce construction-related impacts on the Seven Springs Road neighborhood.

66. With regard to working over active pipelines, the EA states that Transco would calculate construction-related stresses on the active pipelines and develop measures to keep the calculated stresses within public safety codes and Transco specifications.<sup>63</sup> However, Transco did not provide the final locations or site-specific measures that it would implement. The EA recommends that, prior to construction, Transco file a report with the Secretary of the Commission (Secretary) describing the locations by MP and the site-specific measures that would be implemented to protect existing pipelines at each location where work other than topsoil or trench spoil storage would occur over active pipelines. We have included this recommendation as Environmental Condition 11 of this Order.

67. The DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) does not specify a minimum lateral separation distance between federally regulated natural gas transmission pipelines. However, Transco and other pipeline operators typically separate large-diameter pipelines by approximately 25 feet to allow for the use of standard overland pipeline construction methods and provide ready access in the event of an emergency. Pipeline operators can reduce the offset between parallel pipelines for short distances to reduce impacts on specific resources. Transco will reduce the offset between the Stanton Loop and the existing pipelines to minimize impacts on six residences and provided site-specific Residential Construction Plans (RCPs), detailing how construction at these and other residences within 50 feet of the construction work space will be accomplished. As stated in the EA, Commission staff reviewed these RCPs and found them acceptable.<sup>64</sup>

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<sup>62</sup> EA at 1-24 to 1-25.

<sup>63</sup> EA at 1-25.

<sup>64</sup> EA at 2-74. Transco's RCPs are also discussed later in this Order.

68. The EA states that the Caldwell Uprate would involve increasing the MAOP of approximately 25.55 miles of existing 36-inch-diameter pipeline in Essex, Passaic, Bergen, and Hudson Counties, New Jersey.<sup>65</sup> The Caldwell Uprate will allow Transco to operate the pipeline at a MAOP of 722 pounds –force per square inch gauge (psig), an increase of approximately 13 percent over the current MAOP of 638 psig, and 50 percent of the maximum design pressure of 1,444 psig. The Caldwell Uprate will also allow Transco to transport the additional volume of natural gas to be provided by the project without construction of additional pipeline facilities in the uprate area.

69. Many affected landowners, other individuals, and officials from the Township of Nutley objected strongly to the project, primarily due to concerns about safety risks associated with the increased operating pressure. In response to these comments, the EA explains that Transco must implement the Caldwell Uprate in accordance with PHMSA regulations, which require Transco to determine and document that the uprate segment can operate safely at the increased pressure.<sup>66</sup> The EA states that, in early 2012, Transco completed an internal inspection of the entire Caldwell Uprate segment and a successful hydrostatic test at 1,150 psig (159 percent of the increased MAOP) of over 55 percent of the Caldwell Uprate, with the remainder of the Caldwell Uprate to be hydrostatically tested during a scheduled service outage in early 2013.

70. In response to comments, the EA examines two alternatives to the Caldwell Uprate.<sup>67</sup> Each alternative would require the installation of between 12.4 miles and 17.9 miles of new pipeline facilities at locations other than the area of the Caldwell Uprate. Due primarily to the additional land impacts associated with the alternatives, the EA concludes that neither alternative is environmentally preferable to the Caldwell Uprate.

71. The EA further explains that all elements of the Northeast Supply Link Project including the Stanton Loop, Caldwell Uprate, and all existing pipelines, would be subject to PHMSA regulations that are designed to ensure the safe operation and maintenance of the facilities, once installed. Transco's safety controls and maintenance requirements are described in the EA but include monitoring by Transco's automated supervisory control and data acquisition system which constantly gathers information related to operating pressures and gas flows, regular inspection, and testing in accordance with its Integrity Management Program.

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<sup>65</sup> EA at 1-3.

<sup>66</sup> EA at 1-6.

<sup>67</sup> EA at 3-2.

72. In response to landowner concerns, the EA discusses Transco's special construction techniques to minimize project impacts on residential properties.<sup>68</sup> The EA includes site-specific RCPs for those residences within 50 feet of the construction work area. As stated earlier, Commission staff reviewed the RCPs and found them acceptable. The EA recommends that Transco file evidence of landowner concurrence with the RCPs for the six residences that would be located within 10 feet of the construction work space at MPs 7.9, 10.3, 10.6 and 12.9 and Access Road ST-003 along the Stanton Loop and MP 42.5 along the Palmerton Loop. We have included this recommendation as Environmental Condition 15 of this Order. The EA concludes, and we agree, that implementation of the special construction methods and site-specific RCPs will minimize disruption to residential areas to the extent practicable and facilitate restoration of these areas as soon as possible upon completion of construction.

73. A number of landowners were concerned about potential project impacts on septic systems. Appendix D of the EA includes Transco's project-specific Septic System Contingency Plan which describes how Transco will avoid and/or mitigate for impacts on private septic systems.

74. The EA also addresses landowner and local government concern that construction and operation of an additional pipeline adjacent to Transco's existing system could adversely impact the ability to sell homes and/or reduce home values.<sup>69</sup> The Commission recognizes the general potential for property values to be negatively impacted by the construction of nearby energy infrastructure. However, here the EA references two national studies that did not find a significant, systematic relationship between home price and proximity to natural gas pipelines, although commentators disputed these reports. The EA also explains that the potential effect of the project pipeline loops on property values would be incremental, given that two or three pipelines already exist in the areas of the project loops. The effect that a pipeline easement may have on a property value is an issue that can be negotiated between the landowner and Transco during the easement acquisition process. Accordingly, on balance, we do not find the potential presented here for a negative impact on property values sufficient to alter our determination that the Supply Link Project is required by the public convenience and necessity.

## **2. Post-EA Comments**

75. To satisfy the requirements of NEPA, Commission staff prepared an EA for the Northeast Supply Link Project. FWS, DOT, and the COE participated in the preparation of the EA as cooperating agencies. On August 1, 2012, the EA was placed into the public

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<sup>68</sup> EA at 1-24 and 2-73.

<sup>69</sup> EA at 2-90.

record of this proceeding and issued for a 30-day comment period. The EA addresses geology and soils, water resources, fisheries and wetlands, vegetation and wildlife, land use, recreation and visual resources, socioeconomics, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. As summarized above, the EA also addresses all substantive issues raised during the scoping process or otherwise identified prior to the issuance of the EA.

76. After issuance of the EA, 115 commentors filed written comments: two federal agencies (the U.S. Coast Guard and the U.S. Environmental Protection Agency (EPA)); three state agencies (the Pennsylvania Department of Conservation and Natural Resources, NJDEP, and New Jersey State Agricultural Development Committee); two local governments or officials (Township of Nutley and Township of Nutley Commissioner Tucci); one non-governmental organization (Eastern Environmental Law Center (EELC)); and 89 individuals. **We note that only eight of the 2,528 affected landowners filed comments.**

77. Several commentors contend that the Commission was required to prepare an EIS, citing CEQ regulations that provide for alternative arrangements to comply with NEPA under emergency circumstances when there is insufficient time to prepare an EIS. The commentors contend that because the project is not a result of an emergency action, the Commission is required to prepare an EIS for the project.

78. Section 1506.11 of the CEQ regulations pertains to emergency actions which would result in a significant impact on the environment, allowing agencies to seek consultation with CEQ when there is insufficient time to complete an EIS. We agree that the project is not an emergency action and that this section does not apply to the project. However, as identified in the EA and discussed above, Commission staff prepared an EA that concludes, and we agree, that the project would not result in significant impacts.<sup>70</sup> Thus, an EIS is not required under NEPA.

79. EELC, writing on behalf of the New Jersey Highlands Coalition, the Sierra Club, Food & Water Watch, Fight the Pipe, and Clinton Township, also comments that the Commission should have prepared an EIS as opposed to an EA, arguing that the project will significantly affect the quality of the human environment. EELC believes that the intensity of the project mandates a finding of significant impacts. Under the CEQ regulations, intensity “refers to the severity of impact” and the CEQ regulations provide 10 factors to consider when evaluating intensity.<sup>71</sup> Out of these 10 factors, EELC contends 9 intensity factors weigh in favor of a finding of severe and significant impacts

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<sup>70</sup> EA at 4-1.

<sup>71</sup> 40 C.F.R. §§ 1508.27(b)(1)-(10) (2012).

necessitating an EIS rather than an EA.<sup>72</sup> We disagree and address the topics of each intensity factor identified by the EELC throughout this Order below.

80. EELC states that the Commission should have prepared an EIS because the project is likely to establish precedent for future actions with significant effects. EELC believes that the project will have a precedential effect on future decisions for projects that impact the resources of the New Jersey Highlands region.

81. EELC's argument that Commission staff's EA for the project would establish a precedent is without merit because the EA is a non-binding document and creates no precedent to which the Commission is bound.<sup>73</sup> Each proposed project is unique and has different effects on different resources. In determining whether to prepare an EIS or an EA, staff relies on the Commission's regulations and makes an individual determination for each new proposal. For example, the Commission prepared an EIS for Texas Eastern Transmission's New York-New Jersey Expansion Project.<sup>74</sup> The New York-New Jersey Expansion Project involved the construction of facilities in New Jersey and New York. Unlike here, however, where Transco primarily proposes to modify existing facilities and construct pipeline loop, the New York-New Jersey Expansion Project, among other things, involved the construction of 15.2 miles of new 30-inch pipeline, the construction of 4.8 miles of 42-inch diameter pipeline that replaced existing pipeline, the construction of new meter and regulating stations, the installation of new pig launchers and receivers, and abandoning by removal approximately 8.95 miles of pipeline. The Commission's decision to prepare an EIS for the New York-New Jersey Expansion project evinces the

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<sup>72</sup> The intensity factors listed by EELC include that the project: (1) poses a significant threat to public health and safety; (2) will affect numerous unique geographic areas; (3) may cause destruction of significant scientific, cultural, and historical resources; (4) will have environmental impacts likely to be highly controversial; (5) could have possible effects on the quality of the human environment that are highly uncertain; (6) is likely to establish a precedent for future actions with significant effects; (7) will have cumulatively significant impacts on the environment; (8) may adversely affect several endangered and threatened species and their habitat; and (9) might violate federal, state, and local law requirements imposed for the protection of the environment.

<sup>73</sup> See e.g., *Town of Cave Creek v. FAA*, 325 F.3d 320, 332 (D.C. Cir. 2003) (finding that the Federal Aviation Administration reasonably concluded that an EIS was unnecessary and preparing an EA for the agency review of high-altitude arrival and departure procedures would not be binding precedent).

<sup>74</sup> *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, *reh'g denied*, 141 FERC ¶ 61,043 (2012).

independence of our review and the lack of precedential value in our decision whether to prepare an EA for each individual project.

82. Throughout the NEPA process, commentors cited the history of the Market Link Expansion Project to urge the Commission to deny the proposals herein. The Township of Nutley contends that the Market Link Expansion Project was proposed to replace the existing pipeline in the Nutley area, but was denied by the Commission due to safety concerns and failure to prove project need after heavy opposition from federal, state, and local officials. A former mayor of Clinton Township asserts that the Market Link Expansion Project was introduced and withdrawn due to lack of demand.

83. Transco's Market Link Expansion Project would have included the construction of approximately 85 miles of pipeline loop in New Jersey, including 17.30 miles of 36-inch loop in Essex, Passaic, and Bergen Counties. The Commission conditionally approved Transco's proposal, finding, among other things, that Transco had provided market support for its project.<sup>75</sup> The Commission, however, withheld a final certificate for the Transco project until two other pipelines, Independence Pipeline Company and ANR Pipeline Company, proposing related facilities, filed with the Commission evidence that they had market support for their portions of the larger project.<sup>76</sup>

84. The Independence Pipeline Project never went forward. Transco subsequently filed to downsize its originally-proposed Market Link Expansion Project and to construct it in two phases (Phase I and II) over two years to meet a revised market need. Transco proposed to reduce the length of some of the originally-proposed segments of loop and not to construct other segments of loop because the additional capacity was no longer needed to serve the project's customers. One of the previously-authorized loop segments excluded from the amended proposal was the pipeline loop through the Township of Nutley (the Roseland Loop). The Commission subsequently approved Phases I and II of the amended Market Link Expansion Project.<sup>77</sup>

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<sup>75</sup> *Independence Pipeline Company, et al.* 89 FERC ¶ 61,283, at 61,841-42 (1999) and 91 FERC ¶ 61,102, at 61,339-40 (2000).

<sup>76</sup> *Independence Pipeline Company, et al.* 89 FERC ¶ 61,283, at 61,840-41 (1999) and 91 FERC ¶ 61,102 at 61,334-38 (2000).

<sup>77</sup> *Transcontinental Gas Pipe Line Company, LLC*, 93 FERC ¶ 61,241 (2000). Transco placed all Phase I and II facilities in service by October 2002.

85. As described above, the Commission had approved construction of the Roseland Loop as part of the Market Link Expansion Project. Due to changed market conditions, however, Transco later excluded the Roseland Loop from its proposal to amend the Market Link Expansion Project. The Commission approved that amended proposal. The commentors interpretation of the history of the Market Link Expansion Project proceeding is mistaken: the Commission did not deny the Market Link Expansion Project due to heavy opposition, public safety concerns, and lack of project need – it merely approved an amended proposal that excluded the Roseland Loop based on changed market conditions at that time.

86. Several commentors note that Transco has not completed a few of the Commission-required state-listed species and cultural resources surveys, and has not completed a majority of the consultations or obtained a majority of the permits required for the project by various federal, state, and local agencies. The commentors ask the Commission to complete an EIS after Transco has met these requirements. In addition, the NJDEP identified in its post-EA comments additional potentially-applicable regulations related to the Green Acres program and New Jersey's Division of Land Use Regulations, Department of Water Allocation and Well Permitting, and State Historic Preservation Office.

87. As discussed above, having found on the basis of the EA that approval of the Northeast Supply Link Project will not constitute a major Federal action significantly affecting the human environment, the Commission is not required to prepare an EIS. Notwithstanding the fact that various surveys, consultations and permits remain to be completed or issued, we find that the information available for use in preparing our EA was sufficient for our analysis of adverse impacts and appropriate mitigations measures across all resource areas. We do, however, encourage interstate pipelines to cooperate with state and local authorities in providing appropriate additional information. For example, the EA includes two recommendations that we adopt as conditions in the appendix to this order. Environmental Condition number 14 requires Transco to file the results of its state-listed species surveys and identify any mitigation measures developed in consultation with the applicable state agencies before starting construction.<sup>78</sup> Environmental Condition number 16 requires Transco to file Phase I and II cultural resources reports, plans and records regarding consultations with various entities in New York, Pennsylvania and New Jersey, and to receive written permission from the Commission's Director of the Office of Energy Projects before starting construction.<sup>79</sup> That we encourage cooperation between interstate pipelines and local authorities,

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<sup>78</sup> EA at 2-59.

<sup>79</sup> EA at 2-102-103.

however, does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.<sup>80</sup>

88. Regarding other federally-required surveys, consultations, and permits, we note that, as indicated in the EA, consultation pursuant to the Endangered Species Act is complete.<sup>81</sup> The only other outstanding consultation is for site evaluation pursuant to the National Historic Preservation Act. Environmental Condition number 16 prohibits the initiation of relevant construction until such consultation is completed. In addition, Environmental Condition number 8 requires Transco to file documentation that it has received all applicable authorizations required under federal law before authorization to commence construction will be granted.

89. The EPA states that the EA does not adequately discuss or address loose, rocky soils, as well as terrain with steep slopes, that is unsuitable for pipeline construction. EPA believes the presence of these geographic features make construction access difficult and increase erosion and revegetative efforts. Additionally, the EPA states that the Commission's Plan does not suffice in these geographic areas and site-specific plans should be developed.

90. The EA discusses Transco's implementation of its county specific E&SCPs in addition to its Plan and Procedures to minimize impacts on soils in regards to potential erosion and revegetation difficulties.<sup>82</sup> Further, the E&SCPs and Plan include mitigation to account for steep terrain to reduce the risk of slope failure. The EA concludes that Transco's E&SCPs are acceptable.<sup>83</sup> In addition, the EA states that Transco would seed all disturbed areas in accordance with written recommendations for seed mixes, rates, and

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<sup>80</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir.1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

<sup>81</sup> EA at 2-46 through 2-54.

<sup>82</sup> EA at 2-5 through 2-8.

<sup>83</sup> EA at 2-3.

dates obtained from the local soil conservation authority or as requested by the landowner or land management agency.<sup>84</sup>

91. The EPA also stated that Transco's request to utilize additional temporary workspace within 50 feet of waterbodies and wetlands, place spoil within 10 feet of certain waterbodies, and not maintain at least 15 feet of vegetative cover between certain waterbodies and the pipeline loops appeared to be unsupported in the EA. The EPA requests that site-specific reasons for these changes be included in the EA for public comment. The EA includes tables (1.7-1, 2.2.2-2, and 2.2.4-3) that identify each location where Transco has requested modifications to the Commission's Procedures for construction through and near wetlands and waterbodies and provides the site-specific reasoning for each modification. The EA explains that Commission staff reviewed Transco's project alignment sheets that depict construction workspaces, wetland and waterbody boundaries, and existing and planned pipeline centerlines, as well as Transco's site-specific construction plans. Using these sources and considering standard industry practices and our experience in pipeline construction, we find that Transco's requested modifications to our general construction procedures are justified.

92. The U.S. Coast Guard commented that it may require Transco to obtain a bridge permit, if Transco builds a bridge (including a pipeline) over any navigable waterways of the United States. The project would be buried below ground at all waterbody crossing locations and does not involve any bridge crossings.

93. Several commentors, including Jean Public, Mr. Shelofsky, Evelyn Vogut, Dean Gianarkis, and Frank Rumore, generally reiterated scoping comments about project impacts on sensitive waterbodies, wetlands, aquifers, and drinking water supplies in New Jersey. As discussed above, based on Transco's construction and restoration methods and other site-specific measures that may be required by state agencies or the COE, the EA concludes, and we agree, that project impacts on waterbodies, wetlands, aquifers, and drinking water supplies will be minor and temporary.

94. EELC believes that the EA inadequately assesses the potential impacts associated with the wet, open-cut crossing of Muncy Creek. The EA explains that Transco's waterbody crossing methods could affect waterbodies through increased sediment loading and turbidity levels, reduced dissolved oxygen concentrations, stream warming, and the introduction of chemical discharges from spills of fuels and lubricants.<sup>85</sup> The EA also recognizes that construction across waterbodies could impact aquatic resources including fisheries, and further acknowledges that the greatest potential impact on

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<sup>84</sup> EA at 2-38.

<sup>85</sup> EA at 2-18.

waterbodies would be generated by the wet, open-cut method. This method would be used at Muncy Creek due to site-specific conditions that render other crossing methods impractical. The EA provides a site-specific description of how the crossing will be accomplished and indicates that Transco will attempt to cross the waterbody within a 24-hour period between June 15 and September 15, which will coincide with anticipated low water flow and when there are not fishery-based restrictions. Further, Transco will implement stream bed and bank restoration methods to encourage rapid recovery of the crossing location. As a result, we conclude that the wet, open-cut crossing of Muncy Creek will result in minor and temporary impacts on the creek.

95. The EELC also comments that the EA fails to fully consider the potential impact of a release of HDD drilling fluid into the South Branch Raritan River. As discussed above, the EA evaluates the impacts that could result from the release of HDD drilling fluid into a waterbody and finds that Transco's site-specific HDD construction and drilling mud contingency plans would reduce the impact of an inadvertent release of drilling mud. We reiterate our previous determination that the HDD crossing of the South Branch Raritan River will be protective of water quality and resources within the river.

96. The EELC states that uncertainties remain about the impacts to aquifers. With regard to sole source aquifers, the EA identifies potential impacts to the aquifers. These impacts include increased turbidity levels for those aquifers affected by a HDD crossing, overland water flow and recharge impacts to shallow aquifers, and potential water table elevation changes during project construction. The EA determines that these impacts would be minor, temporary, and localized to construction areas, and that the impacts would be minimized by certain construction techniques and erosion and sediment control plans to be implemented by Transco. The EA considers these issues in depth, satisfying our responsibility to take a hard look at the project's impacts, and concludes that impacts would be minimal.

97. EELC alleges that the project will violate New Jersey's Freshwater Wetlands Act because this act prohibits the NJDEP from issuing an individual freshwater wetlands permit for projects that would destroy, jeopardize, or adversely modify habitat for threatened or endangered species or would jeopardize the continued existence of a local population of a threatened or endangered species. EELC also states that the project will violate New Jersey's Surface Water Quality Standards because there is a high potential that the project will adversely impact protected Category One Waters at three New Jersey water crossings. In addition, Mr. Shelofsky states that 28 percent of federally-protected bog turtle habitat in wetland W-ST-12-002 will be disturbed.

98. With respect to New Jersey's Freshwater Wetlands Act, the EA states that the NJDEP would evaluate the project under its permit review process.<sup>86</sup> Also, as discussed above, the EA found that the proposed wetland construction and mitigation measures would minimize impacts. We agree with those findings.

99. Further, as discussed above, we find that Transco's project is not likely to adversely affect federally-threatened or endangered species or their habitat and that Transco would meet all state-protected species mitigation and avoidance measures in accordance with the requirements of its federal and state permitting processes.

100. In regard to New Jersey's Surface Water Quality Standards, as discussed above, the EA indicates that Transco's project-specific Procedures, E&SCPs, Restoration Plans, and compliance with all other state and federal requirements, would adequately minimize impacts on waterbodies. We agree and do not find that the project threatens a violation of any federal, state, or local law.

101. Mr. Shelofsky questioned whether the EA evaluated the direct pipe construction method (proposed at Aquashicola Creek) as an alternative crossing method for all locations where the HDD method was determined not to be feasible. The other areas considered for HDD crossing but dismissed (provided in Table 3.8-1 of the EA) are features, with the appropriate mitigation measures, that can be constructed with the open cut construction method. Various parts of Section 2.0 of the EA describe the open cut method and potential impacts on these features and conclude that appropriate mitigation measures are in place, including use of Transco's Plan, Procedures, E&SCP, and site-specific bog turtle mitigation measures. The EA evaluates five crossing alternatives (direct pipe, HDD, open cut, a loop relocation – gap in Leidy Line D, and a loop reroute) at Aquashicola Creek to address potential impacts to the federally listed Bog Turtle and the recently federally designated WRP conservation easement. The EA concludes, with concurrence from the NRCS and FWS, that all other construction methods and alternatives evaluated were either infeasible, less reliable, or not environmentally preferable to the direct pipe method at Aquashicola Creek.<sup>87</sup>

102. In their post-EA letters, several individuals reiterated comments similar to those received during the scoping and pre-filing processes concerning potential project impacts on protected species. Specifically, the EELC contends that the Commission should prepare an EIS and find that the project may significantly impact the documented bog turtle habitat along the Stanton Loop. As discussed above, the EA documents Commission staff's consultation and cooperation with the FWS. The EA concludes that

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<sup>86</sup> EA at 2-35.

<sup>87</sup> EA at 3-11 through 3-12.

the project is not likely to adversely affect any federally-listed threatened and endangered species and notes the FWS's concurrence. We agree with the EA's conclusion.

103. Concerning state-listed species of concern, the EA concludes that Transco will avoid or minimize adverse impacts on most state-listed species. However, as identified above, Environmental Condition 14 of this Order requires Transco to file with the Secretary any outstanding survey results for state-listed species and identify any additional mitigation measures developed in consultation with the state agencies prior to the start of construction.

104. The New Jersey State Agricultural Development Committee (New Jersey Committee) states that the proposed project may involve construction on land subject to state regulations governing eminent domain takings by public utilities. These regulations involve various notice, review, and hearing requirements. The New Jersey Committee requests that the Commission provide it with citations to relevant federal statutes or regulations that supersede these state regulations and allow Transco to construct a project on such land.

105. Initially, we note that Transco is not a public utility – it is a natural gas pipeline company within the meaning of NGA section 2(6), engaged in the business of transporting natural gas in interstate commerce and subject to Commission jurisdiction. In *Schneidewind v. ANR Pipeline Co. (Schneidewind)*,<sup>88</sup> the Supreme Court found that a state's regulation of a natural gas pipeline company was preempted by the NGA. Following *Schneidewind*, the Commission has explained in its certificate orders that while we encourage cooperation between interstate pipelines and local authorities, this does not mean that state and local agencies may prohibit or unreasonably delay the construction of facilities approved by the Commission.

106. In *National Fuel Gas Supply Corporation v. Public Service Commission of the State of New York (National Fuel)*,<sup>89</sup> the Court of Appeals held that a New York statute requiring an interstate pipeline to obtain a certificate from the New York Public Service Commission was preempted by the NGA on the grounds that either the NGA explicitly vested exclusive jurisdiction in the Commission to regulate interstate pipelines or Congress had so occupied the field of regulation of interstate pipelines by enactment of the NGA that there was no room for the states to regulate.<sup>90</sup> Shortly after *National Fuel*

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<sup>88</sup> 485 U.S. 293 (1988).

<sup>89</sup> 894 F.2d 571(2nd Cir. 1990).

<sup>90</sup> The court noted that Congress established the Commission as "a federal body that can make choices in the interests of energy consumers nationally," and reasoned that because the Commission "has authority to consider environmental issues, states may not

was decided, the Commission, citing that case, found that a New York State Constitutional provision that prohibited the taking of land for a pipeline route through State Reforestation Lands was preempted by the NGA, which vests sole authority to determine an interstate pipeline route in the Commission.<sup>91</sup> In another case, the Commission held that local authorities could not deny a permit to a pipeline to conduct regulated activities within the town because the local agency thought another route was superior to the Commission-approved route.<sup>92</sup> In sum, as held by the courts in *Schneidewind* and *National Fuel* and applied in Commission-decided cases, the NGA preempts state and local agencies from regulating the construction and operation of interstate pipeline facilities or the siting of those facilities.<sup>93</sup>

107. Nevertheless, the Commission encourages applicants to cooperate with state and local authorities, stating:

Although the [NGA] and the regulations promulgated by the Commission pursuant to that statute generally preempt state and local law, the Commission has encouraged applicants to cooperate with state and local agencies with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures. . . . The Commission's practice of encouraging cooperation between interstate pipelines and local authorities, however, does not mean that those agencies may undermine

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engage in concurrent site-specific environmental review. Allowing all the sites and all the specifics to be regulated by agencies with only local constituencies would delay or prevent construction that has won approval after federal consideration of environmental factors and interstate need, with the increased costs or lack of gas to be borne by utility consumers in other states." *National Fuel*, 894 F.2d at 579.

<sup>91</sup> *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,403-04 (1990).

<sup>92</sup> *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,360 (1992). See also *Maritimes & Northeast Pipeline, L.L.C. (Maritimes)*, 81 FERC ¶ 61,166, at 61,728-31 (1997).

<sup>93</sup> 894 F.2d at 575-56 (setting forth circumstances under which the Supremacy Clause of the Constitution, Article VI, clause 2, provides for preemption of State and local law).

through their regulatory requirements, the force and effect of a certificate issued by the Commission.<sup>94</sup>

108. That a state or local authority requires something more or different than the Commission, however, does not make it unreasonable for an applicant to comply with both the Commission's and another agency's requirements.<sup>95</sup> It is true that additional state and local procedures or requirements could impose more costs on an applicant or cause some delays in constructing a pipeline. In light of the Commission's goal to include state and local authorities to the maximum extent possible in the planning and construction activities of pipeline applicants, however, not all additional costs or delays are unreasonable.<sup>96</sup>

109. A rule of reason must govern both the state's and local authorities' exercise of their power and an applicant's bona fide attempts to comply with state and local requirements.<sup>97</sup> If a conflict arises, however, between the requirements of a state or local agency and the Commission's certificate conditions, the principles of preemption will apply and the federal authorization will preempt the state or local requirements.

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<sup>94</sup> *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,346-47 (1992).

<sup>95</sup> See e.g., *Texas Eastern Transmission, LP*, 121 FERC ¶ 61,003, at P 12 (2007), where the Commission said:

Regarding Texas Eastern's failure to comply with state and local zoning, sewage, building, and other regulations, the Commission emphasizes that, while state and local regulation is preempted by the NGA where such requirements conflict with federal regulation or would delay construction, applicants may be required to comply with appropriate state and local regulations where no conflict exists. Accordingly, while the Commission's exclusive jurisdiction preempts local and state regulations to the extent they impose requirements above federal requirements or delay construction, this does not exempt Texas Eastern from having to apply for state or local permits that target other concerns. Indeed . . . interstate pipelines are encouraged to cooperate with state and local authorities and Texas Eastern must notify the Commission of any environmental noncompliance with other federal, state or local requirements.

<sup>96</sup> See *Islander East Pipeline Co.* 102 FERC ¶ 61,054, at P 113 (2003).

<sup>97</sup> *Maritimes*, 81 FERC at 61,730-31.

110. Many comment letters re-state concerns regarding impacts to the Highlands Region of New Jersey. As discussed above, Transco has consulted with the Highlands Preservation Council and the EA concludes that impacts to the Highlands Region would not be significant.

111. Mr. Shelofsky and Mr. Rumore commented that the terms “open land” and “residential land” as used in the EA are comingled and appear to understate impacts to residential properties. In addition, Mr. Shelofsky states that a brief review of several RCPs shows a new right-of-way requiring an additional 25 feet, not 20 feet as stated on page 1-31 of the EA, meaning that land impacts for the project may have been underestimated by approximately 25 percent.

112. We recognize the commenters concern regarding residential impacts. The EA acknowledges that residential lands may overlap with other land use categories such as forested, open, and wetland.<sup>98</sup> To label these overlapped areas as residential would devalue land use impacts on other categories. However, to accommodate for the need to address residential impacts, the EA discusses impacts to all residences, regardless of land use classification, including discussion of specialized construction methods, vibration monitoring, and restoration procedures.<sup>99</sup> The EA also includes 69 RCPs for residences located within 50 feet of the construction work space, detailing site-specific construction measures for each residence and a Septic System Contingency Plan to address construction near septic systems.<sup>100</sup> Thus, we believe residential impacts have been adequately addressed in the EA.

113. In response to Mr. Shelofsky’s assertion that land use impacts have been underestimated, the EA states that following construction, the permanent right-of-way of the proposed loops would typically consist of 30 feet of existing right-of-way and 20 feet of new right-of-way for the loop.<sup>101</sup> Although this is Transco’s proposed typical spacing, site-specific constraints at some locations require more than 20 feet of new right-of-way, as Mr. Shelofsky notes. In other locations, Transco would not require any additional new permanent right-of-way, such as through the Seven Springs Road neighborhood.<sup>102</sup> The land use impact acreages for construction and operation of the project presented in the

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<sup>98</sup> EA at table 2.4.1-1 and 2-68.

<sup>99</sup> Cite to 6 pages.

<sup>100</sup> EA at Appendixes C and D.

<sup>101</sup> EA at 1-31.

<sup>102</sup> EA at Appendix C-25 through C-42.

EA are based on the siting of the pipeline as shown on the filed alignment sheets, taking into account any non-typical conditions. Thus, the EA did not underestimate land use impacts.

114. Mr. Shelofsky and Mr. Rumore expressed concerns that Transco did not complete cultural resources investigations before the EA was issued. As stated in the EA, Transco will complete cultural studies and consultation before constructing the Palmerton Loop, Stanton Loop, and Roseland Meter and Regulator (M&R) Station.<sup>103</sup> In addition, in recommendation number 16, the EA recommends that Transco complete cultural resources investigations, reports, plans, and consultations prior to construction. Environmental Condition 16 in Appendix C to this Order clarifies which investigations, reports, plans, and consultations are still outstanding at this time.

115. The New Jersey State Historic Preservation Office (SHPO) provided comments on the Phase II site evaluation report regarding the Boss Farm Site (28HU492), stating that the site is eligible for listing on the National Register of Historic Places (NRHP). For this reason, the New Jersey SHPO states that Transco needs to develop avoidance and treatment plans through consultation to address the adverse effects of the project to 28HU492. The EA agrees with this finding<sup>104</sup> and recommends that Transco provide a proposal including avoidance alternatives at 28HU492, justification of data recovery, and a treatment plan developed in consultation with the New Jersey SHPO (Environmental Condition 16).

116. The EPA states that the General Conformity Analysis should include the underlying assumptions (list of equipment, operating hours, load factors, equations, etc.) used. The EA is a summary document of all information and analyses performed for the project and includes a General Conformity Applicability Analysis summarizing the emission estimates for the project in comparison with the General Conformity Regulations.<sup>105</sup> All assumptions and detailed calculations are available publicly as part of Resource Report 9 to Transco's application and supplemental filings for the project.

117. The EA estimates that the project will emit pollutants close to, but below, the General Conformity Applicability Thresholds. Thus, the EA does not require a General Conformity Determination. We recognize EPA's concerns regarding General Conformity requirements and will adopt, with modifications, Environmental Condition 17 of the EA to ensure additional measurement and follow-up of construction emissions

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<sup>103</sup> EA at 2-101 and 2- 102.

<sup>104</sup> EA at 2-99 and 2-100.

<sup>105</sup> EA at 2-112 through 2-114.

to allow for continued compliance with the general conformity regulations. The modifications will clarify the procedures should actual construction activities result in a General Conformity Determination being required (Environmental Condition 17).

118. Several commentors in Hunterdon County, New Jersey expressed concern regarding the amount of particulate matter emissions the project would generate and believe the 13.4 tons of emissions to be generated would result in a significant impact to residents. The EA provides a breakdown of construction emissions by county and project component. Of the 13.4 tons of total particulate matter emissions, 1.8 tons would be emitted across the Stanton Loop in Hunterdon County. The EA discusses Transco's Fugitive Dust Control Plan which would minimize particulate matter emissions.<sup>106</sup> Also, total construction emissions are below the General Conformity Thresholds (100 tons of particulate matter), which sets levels for evaluation of pollutants in areas exceeding National Ambient Air Quality Standards to protect against further degradation. The EA concludes that construction emission impacts would not be significant and, once construction activities in an area are completed, fugitive dust and construction emissions would subside and project-related impacts on air quality would terminate.

119. The EPA expressed concern regarding the background noise levels identified for the Essex County Environmental Center located near the proposed Compressor Station 303. EPA believes the identified existing noise levels in the EA are too high and requests that Transco provide additional supporting information. Mr. Shelofsky also filed comments regarding background noise measurements for the environmental center and requested clarification whether these values are estimations or measured data. The EA identifies two buildings as noise sensitive areas (NSAs) related to the Essex County Environmental Center, i.e., NSA 3 and NSA 4. NSA 3 is a building located adjacent to Eagle Rock Avenue, nearest Compressor Station 303. NSA 4 is a second building located further northwest and setback about 200 feet from the main road.

120. Transco filed supplemental comments on the EA, stating that the provided estimated background noise levels for NSAs 3 and 4 were calculated based on measured levels taken at a residential structure located on the North side of Eagle Rock Avenue, across from Compressor Station 303. This measurement location provides similar characteristics (distance from the main road, distance to the proposed compressor station, vegetative cover, etc.) to provide sufficient justification for use as baseline measured ambient estimates for the environmental center. In addition, the EA estimates that the projected contribution of noise from the compressor station will be below the day-night sound level (Ldn) criterion of 55 decibels on the A weighted scale (dBA).<sup>107</sup> Thus, the

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<sup>106</sup> EA at 2-117.

<sup>107</sup> EA at 2-123 to 2-124.

EA concludes and we agree that the impact from the compressor station will not be significant. Regardless of any dispute regarding background noise levels at the environmental center, Environmental Condition 18 requires Transco to conduct post construction noise surveys at the NSAs to ensure that the noise contribution from Compressor Station 303 does not exceed and Ldn of 55 dBA.

121. General safety comments received after issuance of the EA were similar to those received during scoping. As summarized above, the EA includes a detailed description of the project-specific procedures that Transco would implement to ensure compliance with the DOT *Minimum Federal Safety Standards* in Title 49 C.F.R. Part 192.<sup>108</sup> Transco has certified that the project will be designed, constructed, operated, monitored, and maintained in compliance with these requirements, which we believe are protective of public safety.

122. The EA also addresses the question of the safety of operating multiple pipelines within a contiguous right-of-way.<sup>109</sup> The EA notes that Transco is currently operating more than one pipeline within its right-of-way. As discussed, the DOT requires operators to address the unique safety issues of their individual pipeline systems regardless of whether a pipeline shares the right-of-way with other underground utilities. This includes understanding and addressing environmental conditions, potential threats from other structures, or other risks to a pipeline's operational safety and integrity. The project will be designed, constructed, operated, and maintained to meet or exceed the federal pipeline safety regulations which are set to protect the public from the risk of pipeline incidents.

123. As noted above, Transco successfully completed hydrostatic testing of 55 percent of the Caldwell Uprate segment of the project in 2012 and is scheduled to complete hydrostatic testing of the remainder of the Caldwell Uprate during a previously-scheduled, off-peak outage in early 2013. The EELC and several commenters contend that the Commission failed to collect all of the hydrostatic testing information from the project and possible effects on the human environment are highly uncertain. EELC believes that the Commission must collect and assess this missing information in an EIS.

124. Based on the results of a 2012 internal inspection of the entire Caldwell Uprate segment, Transco expects that the remaining portion of the segment will also pass the upcoming hydrostatic test. As stated in the EA, Transco will conduct the internal inspection and hydrostatic testing of the Caldwell Uprate segment under its Integrity Management Program using PHMSA requirements. The test is not subject to the

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<sup>108</sup> EA at 2-125 to 2-136.

<sup>109</sup> EA at 2-134.

Commission's environmental review for the project.<sup>110</sup> In accordance with PHMSA regulations and as stated in the EA, Transco must determine and document that the Caldwell Uprate segment can safely operate at the increased MAOP prior to implementing the uprate.

125. We received five comments regarding the DOT's Corrective Action Order associated with the December 3, 2011 pipeline failure on Transco's system in Marengo County, Alabama. The comments contend that elements of Transco's system associated with the proposed project are of similar age to Transco's system in Merengo County. These commentators believe that the increased MAOP of the project is a threat to the environment and public. In response, Transco stated that it continues to work under PHMSA oversight to complete an accurate and complete Integrity Verification and Remediation Plan as a result of the Merengo County incident. In addition to this work, the project at issue here must comply with current PHMSA safety regulations.<sup>111</sup> We conclude that natural gas transmission remains a safe and reliable means of energy transportation and that operation of the project will represent only a slight increase in risk to the nearby public.<sup>112</sup>

126. The EPA requested inclusion of the Susquehanna Roseland Electric Transmission Line (SRETL) project as part of the cumulative impacts assessment. The EA discusses the SRETL project in cumulative impacts and concludes that the separate construction schedules and the location of the SRETL project and Transco project in the same right-of-way for a substantial distance would not result in significant impacts.<sup>113</sup>

127. EELC contends that the project will have cumulatively significant impacts on the environment, and that the Commission should have prepared an EIS rather than an EA. The CEQ's regulations require agencies to consider three types of impacts: direct, indirect, and cumulative.<sup>114</sup> The regulations state that "direct effects" of a proposed action are "caused by the action and occur at the same time and place."<sup>115</sup> "Indirect effects" are "caused by the action and are later in time or farther removed in distance, but

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<sup>110</sup> EA at 1-6.

<sup>111</sup> EA at 2-134.

<sup>112</sup> EA at 2-135.

<sup>113</sup> EA at 2-142 and 2-143.

<sup>114</sup> 40 C.F.R. § 1508.25 (2012).

<sup>115</sup> 40 C.F.R. § 1508.8(a) (2012).

are still reasonably foreseeable.”<sup>116</sup> “Cumulative impact” is defined as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”<sup>117</sup>

128. The EA includes an analysis of the cumulative impacts of related past, present, and reasonably foreseeable activities in the project area.<sup>118</sup> The EA describes the impacts of Marcellus Shale development, existing and pending jurisdictional natural gas pipelines, and unrelated projects.

129. The EA considers the general development of the Marcellus Shale resources in the region in the vicinity of the project. For example, the EA states that 1,937 Marcellus Shale wells were drilled in Pennsylvania in 2011 and that approximately 951 wells would be drilled in 2012 based on January through April data, according to the Pennsylvania Department of Environmental Protection (Pennsylvania DEP). The project facilities closest to active Marcellus Shale drilling activities are the proposed Muncy Loop in southeastern Lycoming County, Pennsylvania and the existing Leidy Interchange Hub in northwestern Clinton County, Pennsylvania. The EA states that it is likely that drilling would continue through the period of construction of the project, but that the exact extent of the drilling is unknown. Further, the EA states that the Marcellus Shale does not extend beneath New Jersey, and that no Marcellus Shale wells were drilled in New York in 2011.<sup>119</sup>

130. However, notwithstanding the EA’s description of Marcellus Shale development, and contrary to EELC’s assertion, we are not required to conduct a full-scale review of the environmental impacts of all development of the Marcellus Shale region. The development of the Marcellus Shale region is neither causally-related to the project nor reasonably foreseeable; thus, as the EA concludes, a more specific analysis is outside the scope of the cumulative impact analysis in the EA because the exact location, scale, and timing of future Marcellus Shale activities are unknown.<sup>120</sup>

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<sup>116</sup> 40 C.F.R. § 1508.8(b) (2012).

<sup>117</sup> 40 C.F.R. § 1508.7 (2012).

<sup>118</sup> EA at 2-136-151.

<sup>119</sup> EA at 2-141.

<sup>120</sup> EA at 2-140. The Commission has recently issued several orders discussing whether activities are “reasonably foreseeable” and “causally related” for purposes of consideration in a cumulative impact analysis. *See, e.g., Central New York Oil and Gas Company, LLC*, 137 FERC ¶ 61,121 (2011), *order on reh’g*, 138 FERC ¶ 61,104 (2012),

131. When looking at project impacts, the Supreme Court held in *U.S. Dep't of Transp. v. Public Citizen (Public Citizen)*,<sup>121</sup> that NEPA requires a “reasonably close causal relationship” between the environmental effect and the alleged cause.<sup>122</sup> The Court further explained that this is similar to “the familiar doctrine of proximate cause from tort law.”<sup>123</sup> In *Public Citizen*, the Court upheld the Federal Motor Carrier Safety Administration’s (FMCSA) decision not to consider the potential environmental impacts of an increased number of Mexican trucks on U.S. roads in its EA assessing new safety regulations governing Mexican motor carriers. The Court based its decision upon the agency’s finding that the relationship between the increased number of trucks and the safety regulations was not a reasonably close causal relationship.<sup>124</sup> Similarly, there is not a reasonably close causal relationship between the development of Marcellus Shale in Pennsylvania and our approval of the Northeast Supply Link Project.

132. EELC argues that because Transco’s stated purpose for the project includes providing its customers with access to new sources of primarily Marcellus Shale gas, the development of Marcellus shale is a reasonably foreseeable consequence of the project, and the impacts of Marcellus Shale development must be weighed in the cumulative impacts analysis.

133. We disagree. The EA states that the development of the Marcellus Shale in Pennsylvania began in 2005 and has rapidly expanded. The EA adds that forecasts estimate that Pennsylvania will produce approximately 7.5 billion cubic feet (Bcf) of natural gas per day by 2015 and 13.4 Bcf per day by 2020, the vast majority of which will come from shale reserves.<sup>125</sup> In contrast, the proposed project herein will only transport an additional 250,000 Dth per day – a very small percentage of the projected growth. Natural gas development in the Marcellus Shale region will continue with or without the project and will find other avenues to market. Further, the Commonwealth of

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*aff'd, Coalition for Responsible Growth and Resource Conservation et al. v. FERC*, No. 12-566, Slip Copy, 2012 WL 2097249 or 2012 U.S. App. LEXIS 11847 (2nd Cir. June 12, 2012); *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043 (2012).

<sup>121</sup> 541 U.S. 752, 767 (2004).

<sup>122</sup> *Public Citizen*, 541 U.S. at 767 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> EA at 2-140.

Pennsylvania regulates new permits, wells, gathering lines, and other facilities. Therefore, it is the State that determines whether gas will be developed in Pennsylvania, whereas the Commission's NGA section 7 jurisdiction is limited only to the construction, operation, and maintenance of the project and natural gas transported in interstate commerce. The Commission has no statutory authority to promote or prevent the kinds of impacts associated with the development of the Marcellus Shale region. Even if we decided not to issue a certificate for the project, there is no evidence to show that a denial of the proposals herein would prevent impacts from the construction and operation of well pads, access roads, gathering lines, and compressor stations that EELC is concerned about. Certainly, there is a relationship between this project and Marcellus Shale development (Transco states in its application that the project will provide shippers access to natural gas supplies being produced in the Marcellus Shale supply area). However, this link is not the "close causal relationship" the Supreme Court described in *Public Citizen*.

134. Consideration of the project's cumulative impacts does not change the analysis of impacts under *Public Citizen*, where the Court also held that the FMCSA appropriately examined the cumulative impacts of its safety rule.<sup>126</sup> As we recently explained in *Central New York Oil and Gas Co. (Central New York)*, the Ninth Circuit analogized cumulative impacts to links in a single chain:

Environmental impacts are in some respects like ripples following the casting of a stone in a pool. The simile is beguiling but useless as a standard. So employed it suggests that the entire pool must be considered each time a substance heavier than a hair lands upon its surface. This is not a practical guide. A better image is that of scattered bits of broken chain, some segments of which contain numerous links, while others have only one or two. Each segment stands alone, but each link within a segment does not.<sup>127</sup>

135. The EA considers past, present, and future Marcellus Shale activities and logically concludes that the project and impacts from Marcellus Shale production activities are not links in the same chain. Specifically, the EA cites Transco's stated purpose to expand the natural gas delivery capacity to the northeast U.S. and to provide its customers with access to new sources of natural gas. Transco believes the project will also enhance

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<sup>126</sup> *Public Citizen*, 541 U.S. at 769-770.

<sup>127</sup> *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at P 88 (2011), *order on reh'g, clarification and stay*, 138 FERC ¶ 61,104 (2012) (quoting *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989)).

national energy security by providing more gas to market and will reduce overall natural gas transportation costs. Further, Transco cites increasing natural gas demand in the region, and references New Jersey Governor Christies' 2011 Energy Master Plan, which encourages increased natural gas use for power generation and calls for the expansion of New Jersey's existing natural gas pipeline infrastructure. The development of natural gas resources in the Marcellus Shale region will continue with or without this project and developers, who are not subject to the Commission's jurisdiction, will continue to drill new wells and construct gathering systems to extract and move the shale gas. This project is designed as a high-pressure, high-capacity pipeline to transport natural gas in interstate commerce supporting Transco's entire system, not as a gathering system for shale gas produced in the region.

136. In addition, future Marcellus Shale drilling activities and the potential associated environmental impacts are not reasonably foreseeable. As explained in the EA, the exact location, scale, and timing of future actions are unknown.<sup>128</sup> EELC disagrees, noting that publicly available maps prepared by the Pennsylvania DEP provide quantitative and geographic data on the location of permitted gas wells in Pennsylvania and show the locations of existing and proposed wells in the counties crossed by the project. EELC contends that the location and development of the wells is sufficiently certain to justify a more detailed NEPA analysis. The EPA also requested a clearer depiction of cumulative impact projects shown on a map (including permitted and projected Marcellus wells) to provide geographic reference.

137. The available maps do not provide the degree of specificity necessary for an in-depth review and meaningful analysis in the EA. Knowing the location of a permitted, yet unconstructed, well does not mean that other specific factors are known such as the specific location of gathering lines, access roads, and other associated infrastructure and related facilities; this information is not provided in the maps cited by EELC. In addition, although Pennsylvania has issued thousands of well permits, and continues to issue new permits, it is unknown when, or even if, these wells will be drilled. We agree with the EA's conclusion that the factors necessary for meaningful analysis of when, where, and how Marcellus Shale development will occur are ultimately unknowable and not reasonably foreseeable at this time. The EA provides general information on the number and general location of wells permitted in order to provide public disclosure of environmental issues. While we take this information into account, however, it is not determinative in our reaching a finding that the proposed project will have no significant adverse environmental impacts.

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<sup>128</sup> EA at 2-140.

138. EELC contends that the situation here is analogous to *Thomas v. Peterson (Thomas)*.<sup>129</sup> We believe, however, that *Thomas* is not applicable. In *Thomas*, the court held that the Forest Service's plan to prepare separate EAs for the forest road approval and timber sales approvals was an impermissible segmentation of connected actions.<sup>130</sup> The court first found the approval of the new road and timber sales were "connected actions" under NEPA,<sup>131</sup> stating that "[w]here agency actions are sufficiently related so as to be 'connected' within the meaning of NEPA, the agency may not escape compliance with the regulations by proceeding with one action while characterizing the others as remote or speculative."<sup>132</sup> Thus, the issue in *Thomas* was the Forest Service's attempt to segment several federal actions into small enough parts to avoid the preparation of an EIS. Our review and approval of Transco's proposed project, and impacts from the development of the Marcellus Shale region, are not connected actions within the meaning of NEPA. As we stated before, development of the Marcellus Shale region will proceed with or without the proposed project and the Commission has no control over the siting and drilling of natural gas wells and related infrastructure in Pennsylvania.

139. More analogous to this case is *Sylvester v. U.S. Army Corps of Engineers (Sylvester)*,<sup>133</sup> where the court addressed the scope of analysis that federal agencies must conduct in determining whether their actions, when combined with private actions, require an agency to review the environmental impacts of project-related private actions under NEPA.<sup>134</sup> The court in *Sylvester* upheld the Corps decision to limit its NEPA review to impacts of the construction of a golf course for which the Corps issued a permit, rather than look at the impacts of the larger resort complex.<sup>135</sup> The court

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<sup>129</sup> 753 F.2d 754 (9th Cir. 1985).

<sup>130</sup> *Id.* at 759.

<sup>131</sup> CEQ regulations state that "Connected actions, which means they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25 (2012).

<sup>132</sup> *Thomas*, 753 F.2d at 760.

<sup>133</sup> 884 F.2d 394 (9th Cir. 1989).

<sup>134</sup> *Id.* at 398.

<sup>135</sup> *Id.* at 401.

explicitly distinguished *Sylvester* from *Thomas*, finding that the federal actions in *Thomas* were joined to each other as links in the same chain in a way that the golf course and resort were not.<sup>136</sup> The court explained that the golf course and the resort complex were separate segments of chain and, although the golf course and resort complex would each benefit from the other's presence, each project could exist without the other.<sup>137</sup>

Transco's proposed Northeast Supply Link Project and the development of the Marcellus Shale region are related in the same way as the golf course and the resort in *Sylvester*: i.e., separate segments of chain each of which can exist without the other. Marcellus Shale development will continue with or without the project and there is no "reasonably close causal relationship" between the alleged impacts of Marcellus Shale development and the proposed project.

140. Finally, EELC asserts that the EA impermissibly relies on compliance with other agencies' permitting requirements as a basis for a finding of no significant impact. EELC contends that Commission staff abdicated its NEPA responsibility by deferring to standards administered by other agencies without independently assessing the impacts. EELC argues that the EA's reliance on other agencies' regulations does not supplant the requirement of a thorough environmental analysis and does not suffice as a hard look under NEPA.<sup>138</sup> Specifically, EELC points to the EA's reliance on the Pennsylvania DEP's Bureau of Oil and Gas Management's Best Management Practices for the treatment of soil resources; the expected mitigation of impacts on wetlands by the Army Corps of Engineers and the States of Pennsylvania, New Jersey, and New York; and the necessity of the applicant to comply with federal, state and local air regulations.

141. As explained above, we are not required to undertake an in-depth assessment of the impacts of the development of Marcellus Shale in the EA because the project and such development do not have a reasonably close causal connection and the impacts from Marcellus Shale development are not reasonably foreseeable. Nonetheless, staff looked at the general impacts of Marcellus Shale development. The EA thoroughly analyzes each aspect of the project and its impacts, as detailed throughout this order. The EA explains that based on Transco's compliance with other laws and mitigation required by the Commission and other agencies, the EA can recommend a finding of no significant impact. The EA acknowledges that Transco will be required to comply with other federal and state laws not administered by the Commission and implement additional mitigation measures required by these other federal and state agencies. The EA also finds that based

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<sup>136</sup> *Id.* at 400.

<sup>137</sup> *Id.*

<sup>138</sup> Citing *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971).

on the regulation of natural gas exploration, production, and gathering by Pennsylvania, the Susquehanna River Basin Commission, and other state agencies, cumulative impacts of the project will not be significant. It is not unreasonable for the EA to assume that Transco will comply with permit requirements administered by other agencies. The fact that we take these laws and measures into account in assessing the environmental impact of the project is not an abdication of our responsibility. EELC offers no evidence why it is inappropriate to assume Transco will adhere to its permit requirements.<sup>139</sup>

142. The EPA commented that the Compressor Station 303 site alternatives evaluated in the EA only considered sites within four miles of the 13-mile area identified as feasible to site the compressor station. The EPA also believes that Transco's ownership of the property for its preferred site should not be an environmental criterion considered in evaluating alternatives. The identification of a 13-mile area for location of the compressor station set the boundaries for the initial alternatives analysis early in the siting process. The EA evaluates eight alternate compressor station sites within the identified area. However, the distance of each alternative site when compared to the proposed site ultimately analyzed in the EA does not diminish the adequacy of the alternatives analysis presented. The EA concludes that none of the other eight alternate sites provide an environmental advantage when compared to the proposed site.<sup>140</sup> Also, the EA points out that Transco purchased the property of its preferred compressor station site at its own risk. We encourage applicants to purchase or lease the properties needed for locating permanent aboveground facilities (i.e. compressor stations) along their pipeline systems, in lieu of seeking eminent domain authority.

143. Many comment letters requested consideration of a renewable energy investment. The EA discusses alternative energy options and concludes that environmental, safety, regulatory, and technologic limitations prevent renewable energy sources from providing

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<sup>139</sup> See, e.g., *Sierra Club v. Hassell*, 636 F.2d 1095, 1098 (5th Cir. 1981) (finding that the Federal Highway Administration acted reasonably in not preparing an EIS for the reconstruction of a hurricane-damaged bridge linking an island to the mainland. The court found laws that restricted development and use on the island, including construction permit requirements, regulation of fish habitat, and prohibition on development on sand dunes, were sufficient to protect the island, stating “[a]ppellants have failed to establish why this regulatory scheme is insufficient to protect against adverse environmental effects resulting from increased development or otherwise.”).

<sup>140</sup> EA at 3-13 through 3-16. Alternative sites are either significantly more forested, include more wetlands, cross Green Acres program parcels, or were not large enough to site the compressor station and electrical substation.

the equivalent energy of the project or do not offer an environmental advantage over the project.<sup>141</sup>

144. Because the uprate segments can be taken out of service for hydrostatic testing, Mr. Shelofsky questions whether the existing two pipelines in New Jersey could be taken out of service for replacement. Transco filed supplemental comments on the EA, stating that hydrostatic testing requires a short outage such that customer supplies are unaffected. However, replacement of the two existing pipelines with a new pipeline would require several months to construct and cause disruptions to Transco's customers during that time. In addition, the EA evaluates a pipeline replacement alternative and concludes that replacement of the existing pipelines with a new, larger pipeline would substantially affect Transco's ability to serve its existing customers, reduce system reliability, and affect more landowners during construction and is not preferable to the project.<sup>142</sup>

145. In conclusion, we have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Transco's application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

146. As noted earlier in this order, any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>143</sup>

147. 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 authorization sought herein, and upon consideration of the record,

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<sup>141</sup> EA at 3-1.

<sup>142</sup> EA at 3-4.

<sup>143</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir.1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco authorizing it to construct and operate the Northeast Supply Link Project facilities, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Transco's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions in Appendix C to this order; and
- (4) executing, prior to the commencement of construction, firm contracts for the volumes and service terms equivalent to those in its precedent agreements.

(C) Transco is authorized under section 7(b) of the NGA to abandon in place an approximate half-mile segment of pipeline in New Jersey, as described and discussed in the body of this Order. Transco shall notify the Commission of the date of the abandonment within 10 days thereof.

(D) Transco's request to charge an incremental rate for firm service under proposed Rate Schedule FT on the Northeast Supply Link Project is approved.

(E) No earlier than 60 days, and no later than 30 days prior to commencing expansion service, Transco must file actual tariff records setting forth its incremental recourse rates.

(F) Transco 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 Transco. Transco shall

file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) The untimely motions to intervene listed in Appendix B are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix A**

### **Timely Motions to Intervene**

New York State Public Service Commission  
Andrew H. Shelofsky  
North Carolina Utilities Commission  
Nancy W. Rumore  
New Jersey Department of Environmental Protection  
Piedmont Natural Gas Company, Inc.  
PECo Energy Company  
National Fuel Gas Distribution Corporation  
Hess Corporation  
National Grid Gas Delivery Companies  
Calpine Energy Services, L.P.  
PSEG Energy Resources & Trade LLC  
Ilene and Richard Kaplan  
NJR Energy Services Company  
New Jersey Natural Gas Company  
New Jersey Board of Public Utilities  
Municipal Gas Authority of Georgia and the Transco Municipal Group  
Sierra Club, Food & Water Watch, The New Jersey Highlands Coalition, and Fight the Pipe  
Clinton Township  
Florida Power Corporation, d/b/a Progress Energy Florida, Inc.  
Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc.  
Constellation Energy Commodities Group, Inc.  
Consolidated Edison Company of New York, Inc and Philadelphia Gas Works  
Atmos Energy Corporation  
Atmos Energy Marketing LLC  
Ryan Rusinski

### **Comments on EA**

Andrew Shelofsky  
Kate Smithing  
Jackie Rizzi  
Patricia Ann Harris  
Joseph Thayer  
Frank C. Rumore  
Eillen Dincuff  
Mr. Stewart and Barbara Carr

Kenneth Johanson  
Jo Sippie-Gora  
Janet Martucci  
Courtney Johnson  
Dr. Joseph Testa  
Ruth Bauer Neustadter  
Glenn and Debbie Carson  
Kim Hood  
Erich Walsh  
Courtney Johnson  
Peter Ford  
Linda McKillip  
Nicole Diamond  
Marcia Monma  
Steven Cotoia  
Larry Siegel  
Judy Pizzar  
Cheri Dzubak  
Walter Rothaug  
Donna Henry  
Samuel Simon  
Kevin Klingaman  
Suzanne Ficara  
Micheal Jay  
Joseph Balwierczak  
Liz Benfanti  
Mary Flynn  
Alfred Kuehn  
Matthew Tuttle  
Lynn Porraro  
Marcia Blackwell  
Robert Jones  
Joel Mcgreen  
Meredith Kates  
Debra Wardell  
Brian Gill  
Arthur Levy  
Carlos Correa  
Stephen Tencer  
Julie Jalkanen  
Rachel Zouvelekis  
Sandra Simpson  
Mike Jaffe  
Gray Russell

Donna Perch  
David W Cook  
Charles Kalina  
Truscha Quatrone  
Manuel Aguilar  
Emily Brovich  
PA Department of Conservation and Natural Resources  
Meredith Kates  
Joel McGreen  
Robert Jones  
Joseph Balwierczak  
Marcia Blackwell  
Sidney Goodman  
John Maxwell  
Suzanne Ficara  
Michael Jay  
Jeanne Short  
Charles Vreeland  
Mary Flynn  
Alfred Kuehn  
Lynn Porraro  
Dean Gianarkis  
Dean and Denise Gianarkis  
Ann Zouvelekis  
Dr. Fiona Danaher  
Susan Buonomo  
Patricia Stucker  
Dr. Andrejs Jansons  
Constance Ftera  
Courtney Centi  
Theresa Witte  
Steven Taub  
Carolyn Enger  
Pat Thompson  
Nora Connolly  
Chris Sieverts  
Diane Bozzetto  
Patsy Wooters  
Vanessa Tyler  
Rosemarie DiGianni  
Barbara Quigley  
Michael Bolles  
Gerd Schubert  
Cynthia Soroka-Dunn

Harold Jenssen

Nancy Rumore

The New Jersey Highlands Coalition, the New Jersey Chapter of the Sierra Club, Food & Water Watch, Fight the Pipe, and Clinton Township

Sandra Carella

The New Jersey Department of Environmental Protection's Office of Permit Coordination and Environmental Review

The NJ State Agriculture Development Committee

Jeanne Dunham

Jacob Dunham

Dr. Gerald Dunham

Mary Flynn

Ken Johnston

Marvin Lewis

Phyllis Fast

Lorraine K Bogert

Ellen Kirwin

Lisa O'Neill

Judy Krach

Joanne Pannone

Debra Young

Thomas D'Angelo

Lynn Henderson

Nina Forrest

Eric Sween

Lea Cahill

Phil Dumont

Linda Rienecker

Thomas Koven

Gregory Gorman

Erica Panek

Jessica Diaz

Jessica Reed

Kyle Pronko

Dagmar Heller

The Environmental Protection Agency

**Appendix B**  
**Untimely Motions to Intervene**

UGI Distribution Companies  
Delaware Riverkeeper Network  
South Carolina Electric & Gas Company  
WPX Energy Marketing, LLC

### **Appendix C Environmental Conditions**

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

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Transco must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the 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 life, health, property and the environment 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**, Transco 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, Transco 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.

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

5. Transco 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 Transco'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**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
    - b. how Transco 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 per loop segment and aboveground facility sites, 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 material;
  - e. the location and dates of the environmental compliance training and instructions Transco 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 Transco's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Transco 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, Transco shall file updated status reports with the Secretary on a weekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco'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 EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. 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 Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Transco must receive written authorization from the Director of OEP **before placing any project facilities 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**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed and/or abandoned 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 Transco 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** in areas where work other than topsoil or trench spoil storage would occur over active pipelines, Transco shall file a report with the Secretary describing the locations by MP and site-specific measures that would be implemented to protect the existing pipelines at each area.
12. **Within 30 days of placing the facilities in service**, Transco shall file a report with the Secretary identifying all water supply wells/damaged by construction and how they were repaired or replaced. The report shall also include a discussion of any other complaints concerning well yield or water quality and how each problem was resolved.
13. **Prior to construction**, Transco shall file with the Secretary for review and approval by the Director of OEP, revised Wetland and Waterbody Construction and Mitigation Procedures, Erosion and Sediment Control Plans, and Restoration Plans, as applicable, to include the following information regarding wetlands:

- a. specific locations where crushed stone on geotextile fabric would be used to stabilize the work space;
  - b. site-specific justifications and descriptions of methods to remove all crushed stone during restoration; and
  - c. the appropriate federal or federally delegated approval for each wetland location where this use of crushed stone is proposed.
14. **Prior to construction**, Transco shall file any outstanding survey results for state-listed species and identify any additional mitigation measures developed in consultation with the applicable state agencies.
15. **Prior to construction**, Transco shall file with the Secretary for the review and written approval of the Director of OEP evidence of landowner concurrence with the site-specific residential construction plans at MPs 7.9, 10.3, 10.6 and 12.9 and Access Road ST-003 along the Stanton Loop and MP 42.5 along the Palmerton Loop.
16. Transco shall not begin construction of the Palmerton Loop and wetland mitigation parcels in Pennsylvania and Stanton Loop, Roseland M & R Station, and wetland mitigation parcels in New Jersey until:
  - a. Transco files with the Secretary the following:
    - i. Phase I cultural resources identification survey reports for any previously unreported areas in New Jersey and Pennsylvania, including any wetland mitigation parcels;
    - ii. Phase II site evaluation reports, as required, to provide National Register of Historic Properties (NRHP)-eligibility recommendations for sites 28HU561, 28HU562, and 28HU563;
    - iii. The avoidance plan for 36BR269;
    - iv. any other reports, plans, or special studies not yet submitted;
    - v. comments on Phase I cultural resource survey reports, including the wetland mitigation parcel reports, the Phase II site evaluation studies, site treatment plans, Unanticipated Discoveries Plans, and any other studies or plans from the New York State Historic Preservation Office (SHPO), New Jersey SHPO, the Pennsylvania SHPO and any other consulting parties;
    - vi. a proposal including avoidance alternatives at 28HU492, justification of data recovery, and a treatment plan developed in consultation with the New Jersey SHPO; and
    - vii. the records of continued consultation with the Oneida Nation of New York, the Seneca Nation of New York, the Shawnee Tribe of Oklahoma, and any other tribe that have not yet been filed;

- b. the Advisory Council for Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. the Commission's staff reviews, and the Director of OEP, approves the cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures 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.”**

17. **Prior to construction**, Transco shall file with the Secretary for review and written approval by the Director of OEP, a Construction Emission Plan identifying how Transco would track its construction schedule for each component of the Project within the New York – New Jersey – Connecticut Interstate air quality control region (AQCR) and ensure construction emissions of nitrogen oxides (NO<sub>x</sub>) would remain under the General Conformity applicability threshold. If a change in the construction schedule or project results in emissions of NO<sub>x</sub> greater than the General Conformity applicability threshold of 100 tons per year:
  - a. Transco shall provide and document all mitigation measures under 40 C.F.R. § 93.158 it would implement to comply with the General Conformity Regulations; and
  - b. a Final General Conformity Determination must be issued **before placing any project facilities within the New York – New Jersey – Connecticut Interstate AQCR into service.**
18. Transco shall file a noise survey with the Secretary no later than 60 days after placing Compressor Station 303 in service. If the noise attributable to the operations of all of the equipment at Compressor Station 303 at full load exceeds an L<sub>dn</sub> of 55 dBA at the nearest NSA, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
19. Transco shall conduct a noise survey at Compressor Station 515 to verify that the noise from all of the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an L<sub>dn</sub> of 55 dBA at the nearby NSAs. The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified unit in service. If any of these noise levels are exceeded, Transco shall, **within one year** of the in-service date, implement additional noise control measures to reduce the operating noise level at

the NSAs to below the previously existing noise level. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.