

160 FERC ¶ 62,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

Docket No. CP16-473-000

ORDER ISSUING CERTIFICATE

(Issued July 3, 2017)

On June 29, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate pipeline and auxiliary facilities in Linden, New Jersey (Bayway Lateral Project). This order grants the requested authorizations, subject to certain conditions.

Background and Proposal

Texas Eastern is an indirect, wholly-owned subsidiary of Spectra Energy Partners, LP,³ organized and existing under the laws of the State of Delaware. Texas Eastern is a natural gas company within the meaning of the NGA⁴ and transports natural gas in interstate commerce. Texas Eastern's transmission system extends from Texas, Louisiana and the offshore Gulf of Mexico area, through the States of Mississippi, Alabama, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, West Virginia, Maryland, Pennsylvania and New Jersey, to its principal terminus in the New York City metropolitan area.

The Phillips 66 Company (Phillips 66) owns and operates the Bayway Refinery, a refining facility located in Linden, New Jersey, that converts up to 238,000 barrels of crude oil per day into gasoline, diesel fuel, jet fuel, and heating oil. Cogen Technologies Linden Venture, L.P. (Linden Cogen) owns an 800 megawatt gas-fired combined cycle

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Part 157 (2016).

³ Spectra Energy Partner, LP is an indirect, wholly-owned subsidiary of Enbridge Inc.

⁴ 15 U.S.C. § 717a(6) (2012).

generation facility on land leased from Phillips 66 within the Bayway Refinery yard. The Linden Cogen plant produces steam for the Bayway Refinery, as well as 645 megawatts of electricity for two Regional Transmission Operators: the PJM Interconnection, LLC and the New York Independent System Operator.

Texas Eastern requests authority to construct and operate approximately 2,300 feet of 24-inch-diameter lateral pipeline, a new metering and regulating station that will include two separate delivery points, and related appurtenances and ancillary facilities. Specifically, the Bayway Lateral Project will extend from an interconnection with Texas Eastern's existing 42-inch-diameter Line 38 to Phillips 66's Bayway Refinery and Linden Cogen's cogeneration plant in Linden, New Jersey. The Bayway Lateral Project is designed to provide up to 300,000 dekatherms (Dth) per day of firm transportation service. Texas Eastern estimates the cost of the Bayway Lateral Project to be \$30,867,969.

Texas Eastern has executed precedent agreements with Phillips 66 and Linden Cogen for 66,000 and 234,000 Dth per day, respectively, of firm transportation service on the Bayway Lateral. The precedent agreements have a primary term of 20 years.

Texas Eastern proposes to establish initial incremental rates for firm and interruptible transportation service on the Bayway Lateral Project under Rate Schedules MLS-1 and MLS-2, respectively. Phillips 66 and Linden Cogen have elected to pay a negotiated rate for this service.

Notice, Interventions, and Comments

Notice of Texas Eastern's application was published in the *Federal Register* on July 20, 2016.⁵ The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁶

Consolidated Rail Corporation's (Conrail)⁷ motion to intervene included comments describing, among other things, the Bayway Lateral Project's potential impacts on railroad safety and requesting certificate conditions to mitigate those impacts.⁸ Texas

⁵ 81 Fed. Reg. 47,163 (2016).

⁶ 18 C.F.R. § 385.214(c) (2016).

⁷ Conrail is a freight rail service provider in the northeast corridor of the United States.

⁸ Conrail August 4, 2016 Motion to Intervene and Comment.

Eastern filed an answer to Conrail's comments⁹ and Conrail filed an answer to Texas Eastern's answer.¹⁰ On June 12, 2017, Conrail and Texas Eastern entered into a right-of-way agreement resolving the issues raised in the parties' answers and comments.¹¹ The right-of-way agreement moots the parties' comments and answers, and this order will not address them.

Linden Cogen and Phillips 66 filed a joint motion to intervene with comments in support of Texas Eastern's proposed Bayway Lateral Project, stating that the project will provide direct access to reliable gas service and reduce the risk of interruptions in access when generating capacity is most needed.

Findings

At a hearing held on the date of issuance noted above, there were received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein.

The Commission's Policy Statement provides guidance as to how proposals for certificating new construction will be evaluated.¹² It provides that a pipeline must financially support a project without relying on subsidization from its existing customers. It also established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences.¹³

As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has previously determined that, in general, when a pipeline proposes an incremental rate to recover the cost of a proposed project, the pipeline

⁹ Texas Eastern August 19, 2016 Answer.

¹⁰ Conrail September 7, 2016 Motion for Leave to Answer and Answer.

¹¹ Texas Eastern June 16, 2017 Supplemental Information.

¹² *Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement) 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000), *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

¹³ Policy Statement, 88 FERC ¶ 61,227 at 61,745.

satisfies the Certificate Policy Statement's threshold requirement that the project is not subsidized by existing shippers.¹⁴ Texas Eastern proposes an incremental recourse reservation rate under its lateral Rate Schedule MLS-1 for firm service on the Bayway Lateral Project that is designed to recover the full cost of the lateral. Therefore, it is found that Texas Eastern's existing customers will not subsidize the project, and the threshold requirement of no subsidization is met. Additionally, the proposal will not degrade service to existing customers.

Also, the project will not adversely affect other pipelines or their captive customers because the project is not designed to replace firm transportation service on any other pipeline. Further, no pipelines or their captive customers have protested Texas Eastern's proposal. Consequently, it is found that there will be no adverse impacts on other pipelines or their captive customers.

Texas Eastern states that it worked diligently to include landowners and other interested parties during development of the Bayway Lateral Project.¹⁵ Specifically, Texas Eastern implemented a Stakeholder Outreach Program for the project, which included timely written notice of the application to affected landowners to ensure that all stakeholders had access to project information. Texas Eastern states that the relevant properties are zoned for heavy industrial use, and the nearest residence is a mile from the proposed pipeline facilities.¹⁶ Furthermore, during project development, Texas Eastern met with Phillips 66 and PSEG Power, LLC, the two primary affected landowners, to answer questions and gather input. Texas Eastern has received all voluntary easements or permits from property owners.¹⁷ No property owners have protested the application. Thus, it is found that the Bayway Lateral Project will have minimal impacts on landowners and the surrounding communities.

The Bayway Lateral Project will enable Texas Eastern to provide up to 300,000 Dth per day of transportation service to Phillips 66 and Linden Cogen. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities, it is found, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity

¹⁴ See *Texas Gas Transmission, LLC*, 154 FERC ¶ 61,032, at P 11 (2016).

¹⁵ Application at 9-10.

¹⁶ *Id.*, Resource Report 1, Appendix 1E, section 4.3.

¹⁷ *Id.* at 10.

requires approval of Texas Eastern's proposal, subject to the conditions discussed in this order.

Rates

Texas Eastern proposes to establish initial incremental rates for firm and interruptible transportation service on the project facilities under Rate Schedules MLS-1 and MLS-2, respectively. For firm service under Rate Schedule MLS-1, Texas Eastern proposes a monthly reservation charge of \$2.2150 per Dth and no usage charge.¹⁸ For interruptible service under Rate Schedule MLS-2, Texas Eastern proposes a one-part volumetric charge of \$0.0728 per Dth. In Exhibit P, Texas Eastern states that the interruptible MLS-2 rates have been set at the 100 percent load factor equivalent of the firm MLS-1 rate.

Texas Eastern's proposed recourse rates are based on a year one cost of service of \$7,973,167, the rate of return approved in Docket Nos. RP98-198-000, *et al.*,¹⁹ and a depreciation rate of 5 percent, which is based on an assumed useful life of 20 years for the lateral line facilities.

This order approves the proposed initial incremental recourse rates. Texas Eastern is directed to file an actual tariff record at least 30 days, but not more than 60 days, prior to the commencement of service detailing the incremental rates, as proposed.

Fuel and LAUF

Texas Eastern proposes to recover incremental lost and unaccounted for gas (LAUF) associated with the Bayway Lateral through an incremental Applicable Shrinkage Adjustment (ASA) percentage. Texas Eastern states that it will track changes in LAUF for the new service on an incremental basis through its ASA mechanism set forth in section 15.6 of its General Terms and Conditions. Texas Eastern states that consistent with Commission precedent,²⁰ it will assess its currently applicable LAUF of 0.00 percent as its initial LAUF rate.

Texas Eastern states that it is not proposing to assess fuel for service on the Bayway Lateral because there are no gas compression facilities proposed for the project

¹⁸ According to Exhibit P, Schedule 3, and Texas Eastern's September 1, 2016 data response, the project has no variable costs.

¹⁹ *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

²⁰ *Eastern Shore Natural Gas Co.*, 145 FERC ¶ 62,153, at PP 5-6 (2013).

and no incremental fuel will be incurred by the project. This order approves Texas Eastern's proposed zero fuel rate and initial LAUF rate.

Negotiated Rate Agreements

Texas Eastern proposes to charge negotiated rates to Linden Cogen and Phillips 66. Texas Eastern must file either the negotiated rate agreements or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement²¹ and the Commission's negotiated rate policies.²² These filings must be made at least 30 days, but no more than 60 days, before the proposed effective date for such rates.²³

Pro Forma Tariff Records

Texas Eastern included in Exhibit P *pro forma* tariff records incorporating incremental rates for the Bayway Lateral. Texas Eastern is directed to file tariff records that are consistent with its proposed *pro forma* tariff records not less than 30 days, but no more than 60 days, prior to the in-service date of the project.

Reporting Incremental Costs

To ensure that costs, including fuel, are properly allocated between Texas Eastern's existing customers and the incremental services proposed in this proceeding, Texas Eastern is required to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-reference, as required by section 154.309 of the Commission's regulations.²⁴ This information must be in

²¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996) (Alternative Rate Policy Statement).

²² *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²³ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2016). *See also, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

²⁴ 18 C.F.R. § 154.309 (2016).

sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.²⁵

Environment

On August 5, 2016, Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the Federal Register on August 11, 2016, and was mailed to interested parties including federal, state, and local officials; agency representatives; conservation organizations; potentially interested Indian tribes; local libraries and newspapers; and affected property owners. The Commission received comments in response to the NOI from the U.S. Environmental Protection Agency (EPA).

The EPA suggested various environmental issues it believes should be addressed in the Environmental Assessment (EA), including performing a general conformity applicability analysis; an evaluation of alternatives, including those outside the Commission's jurisdiction; a comprehensive evaluation of cumulative, indirect, and secondary impacts; an estimate of direct and indirect greenhouse gas emissions; climate change adaptation; a discussion of pollution prevention practices; and environmental justice. It is determined that an evaluation of alternatives outside the Commission's jurisdiction was outside the scope of this EA. The EPA's environmental comments applicable to the project are addressed in the appropriate sections of the EA.

To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an EA for the Bayway Lateral Project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA addresses the potential environmental impacts of the project as proposed by Texas Eastern and as identified by Commission staff's own independent review of the environmental issues. The EA was placed into the public record on November 23, 2016. On December 12, 2016, the EPA filed comments on the EA that are addressed below.

In response to the EA, the EPA expressed concerns that section 2.2 is unclear as to the Bayway Lateral Project's temporary and permanent impacts on wetlands. The EA states in section 2.2 (table 2-2) that 3.29 acres of wetlands would be impacted by additional temporary workspaces, which are, by definition, temporary impacts. Table 2-3 also indicates that an additional 0.93 acre of wetlands would be within the construction

²⁵ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

right-of-way, resulting in a total of 4.22 acres of temporary wetland impacts. The EA also clarifies in table 2-3 that less than 0.01 acre would be within the operational (permanent) right-of-way. As stated in the EA, Texas Eastern will avoid and minimize wetland impacts within both the temporary and permanent right-of-way with its implementation of the proposed HDDs and the Commission's Wetland and Waterbody Construction and Mitigation Procedures. Texas Eastern's proposed mitigation also includes revegetation and restoration measures to ensure that all affected wetlands will return to pre-construction conditions and will not result in the loss of any wetlands. Additional mitigation for impacts on wetlands will be determined by the U.S. Army Corps of Engineers during its review of the Bayway Lateral Project for authorization under section 404 of the Clean Water Act.

In response to the EA, the EPA states that the EA does not describe the measures to reduce greenhouse gas (GHG) emissions associated with the project, including reasonable alternatives or practicable mitigation opportunities, nor disclose the estimated GHG reductions associated with such measures. Section 2.7 of the EA does in fact discuss the practices and programs that Texas Eastern will implement to minimize fugitive pipeline and methane emissions (e.g., complying with the EPA's current and proposed new standards regarding leak detection and repair programs, and participating in the EPA's National Gas Star Program). With regards to reasonable alternatives to reduce GHG emissions, section 3.0 of the EA details that the project terminus on the customer's industrial property (resulting in a short pipeline segment from the closest practical take-off point) is efficient and acceptable, thus, the EA does not identify any alternatives that would further minimize the resulting GHG emissions from construction or operation of the project. Considering that the project consists of less than 0.5 mile of pipeline that will be installed by a single HDD, there are limited reasonable possibilities for further reducing GHG construction emissions besides the practices and programs described in section 2.7 of the EA (e.g., adhering to current EPA sulfur-in-fuel standards, limit idling of equipment to less than five minutes when not in active use, using buses or vans for transporting workers to the construction site, and using water or other approved dust-control agents to minimize fugitive dust). Therefore, it is concluded that GHG emissions associated with construction and operation of the project are adequately addressed in the EA.

In response to the EA, the New Jersey Department of Environmental Protection (NJDEP) expresses concerns about the lack of groundwater data for the project area, the potential migration of existing overburden contaminants into the bedrock aquifer during drilling, the impact of the drilling muds on the bedrock aquifer, and the potential impacts from the HDD to Phillips 66's nearby underground liquid petroleum gas storage caverns. Phillips 66's underground facilities consist of two propane storage caverns with a working capacity of approximately 250,000 barrels that are used to meet sales requirements. In addition, Phillips 66 maintains three butane and isobutane storage caverns with approximately 250,000 barrels of working capacity that supplement the

aboveground butane storage facilities servicing the Bayway Refinery. Texas Eastern provided answers and clarifications to the NJDEP concerns in a letter dated January 24, 2017. Texas Eastern provided additional clarifications in response to a Commission request in a letter dated January 27, 2017.

Regarding groundwater quality, NJDEP contends that Texas Eastern should conduct sampling near the bedrock before commencement of dewatering and drilling activities. In response, Texas Eastern states that groundwater testing is not required at bedrock depths because its dewatering activities will occur entirely in trenches built into overburden deposits overlying the bedrock. Accordingly, Texas Eastern conducted groundwater testing and collected samples in depths between four to eight feet below the surface to determine the appropriate treatment and management of future water discharges. Texas Eastern subsequently applied for various NJDEP dewatering permits to discharge waters associated with construction of the surface trenches. Texas Eastern has committed to complying with the requirements of the NJDEP dewatering permits.

With respect to water discharges during HDD installation, Texas Eastern confirms that no discharge of drilling fluids is proposed or will take place during HDD installation. Instead, Texas Eastern states that all installation-related fluid returns will be collected and transferred to lined containers for sampling and disposal in accordance with federal and state requirements. Texas Eastern also responded to the NJDEP request that drilling mud be NSF 60/61 certified. According to Texas Eastern, NSF 60/61 provides certification and requirements for chemicals used by owners and operators of public water systems, water treatment, and delivery. Texas Eastern comments that NSF 60/61 certification is not intended to apply to a drilling application in an area where groundwater is not currently potable or used for public drinking water. In addition, Texas Eastern states that some conditions that may be encountered during HDD activities would require additives that are not NSF 60/61 certified in order to successfully complete the HDD. Texas Eastern states that such additives are standard in the industry and are not known to have a significant adverse effect on water quality.

Furthermore, Texas Eastern will prevent potential contamination of the bedrock aquifer by installing a temporary steel casing during HDD operation to depths below the potentially contaminated overburden to prevent the drilling fluids from coming into contact with contaminated overburden and transferring contamination to the bedrock aquifer. Following completion of the HDD installation, the casings will be removed. Texas Eastern states that the measures proposed in its application are similar to those used industry-wide. Commission staff reviewed Texas Eastern's proposed measures and found them sufficient to prevent cross-contamination during HDD activities.

In response to NJDEP's concerns regarding the use of HDD construction near Phillips 66's underground LPG storage caverns, Texas Eastern states that its methods are safe because its drilling activities will never be closer than 300 feet from the caverns. Specifically, the nearest storage cavern is over 100 horizontal feet and 300 vertical feet

from the nearest point at the HDD exit at the ground surface. The HDD then travels away from the storage caverns and will not reach its maximum depth, approximately 100 feet, until approximately 700 feet from the HDD exit. This HDD design includes Phillips 66's recommendations for the locations of the meter station, lateral route, and considers safety concerns that may be associated with pipeline construction and operation. Moreover, in January 2017, Texas Eastern completed extensive subsurface excavations along the HDD route in the cavern area to better design the HDD work plan in collaboration with Phillips 66's safety, operations, engineering, and maintenance departments prior to the start of HDD construction. Upon review, it is concluded that Texas Eastern's proposed HDD plan, drafted in consultation with Phillips 66, adequately mitigates the concerns regarding drilling near the storage caverns.

Based on the analysis in the EA, it is concluded that if constructed and operated in accordance with Texas Eastern's application and supplement, and in compliance with the environmental conditions in Appendix B of this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁶

This action is taken under 18 C.F.R. § 375.308 and it is ordered that:

(A) Pursuant to section 7(c) of the NGA and upon the terms and conditions of this order, a certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct and operate the Bayway Lateral Project, as described and conditioned herein, and as more fully described in the application.

²⁶ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(B) The certificate issued in ordering paragraph (A) is conditioned on Texas Eastern's:

- (1) completion of the 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, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions in Appendix B of this order.

(C) Texas Eastern shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(D) Texas Eastern's proposed incremental recourse rates and LAUF rate, and zero fuel rate for the service on the Bayway Lateral are approved.

(E) Texas Eastern shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(F) Texas Eastern shall file actual tariff records with the incremental rates not less than 30 days, but no more than 60 days, prior to the date the project's facilities go into service.

(G) Texas Eastern 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 Texas Eastern. Texas Eastern shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(H) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Pamela J. Boudreau
Acting Director
Division of Pipeline Certificates
Office of Energy Projects

**Appendix A
Timely, Unopposed Interventions**

Cogen Technologies Linden Venture, L.P. and Phillips 66 Company (joint motion)
ConocoPhillips Company
Consolidated Edison Company of New York, Inc.
Consolidated Rail Corporation
Exelon Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
NJR Energy Services Company
Orange and Rockland Utilities, Inc.
Philadelphia Gas Works
PSEG Energy Resources & Trade LLC
Range Resources Appalachia, LLC

Appendix B

Environmental Conditions

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

1. Texas Eastern Transmission, LP (Texas Eastern) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Texas Eastern 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 Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Bayway Lateral 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**, Texas Eastern 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**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Texas Eastern 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 the Commission'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 authorization and before construction begins,** Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Eastern will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Texas Eastern will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern 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. Texas Eastern shall employ at least one EI for the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

- f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Texas Eastern 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 Texas Eastern'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 the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Eastern must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Texas Eastern 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.
12. Texas Eastern shall **not begin construction** of the project **until** it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the New Jersey Department of Environmental Protection.
13. Texas Eastern shall **not begin construction** of facilities and/or use of staging, storage, or temporary work areas and access roads **until:**
- a. Texas Eastern provides the geotechnical soil boring information to the New Jersey State Historic Preservation Office, and files with the Secretary the information and any State Historic Preservation Office comments on the information; and
 - b. the Director of OEP notifies Texas Eastern in writing that construction may proceed.

Document Content(s)

CP16-473-000-7317.DOCX.....1-18