

127 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC

Docket No. CP08-467-000

ORDER ISSUING CERTIFICATE

(April 16, 2009)

1. On September 2, 2008, Texas Gas Transmission, LLC (Texas Gas) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ for a certificate of public convenience and necessity authorizing the Fayetteville Shale Compression Project which includes construction of two new compressor stations in White County, Arkansas and Humphreys County, Mississippi, and certain modifications to Texas Gas's existing Greenville Compressor Station in Washington County, Mississippi. The project would provide take-away capacity for new gas supplies from the Fayetteville Shale production area in north central Arkansas and provide producers access to markets in the Midwest, Northeast, and Southeast. Additionally, Texas Gas requests a predetermination supporting rolled-in rate treatment for the project.

2. The Commission grants the requested certificate authorizations and predetermination supporting rolled-in rate treatment, subject to the conditions set forth in this order.

I. Background and Proposal

3. Texas Gas is a natural gas company as defined by the NGA² and is subject to the jurisdiction of the Commission. It is organized and exists under the laws of the State of

¹ 15 U.S.C. § 717f(c) (2006).

² *See id.* § 717a(6).

Delaware, having its principal place of business in Owensboro, Kentucky, and is authorized to do business in the states of Texas, Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois, and Ohio.

4. In an order issued on May 2, 2008, the Commission authorized Texas Gas to construct the 166.2-mile, 36-inch diameter Fayetteville Lateral, primarily located in Arkansas, and the 96.4-mile, 36-inch diameter Greenville Lateral in Mississippi and approved separate incremental rates for each of the laterals (May 2 Order).³ The general purpose of the two laterals is to provide take-away capacity for gas produced in the Fayetteville Shale production area in north central Arkansas for markets in the Midwest, Northeast, and Southeast. The May 2 Order authorized a maximum design capacity for the Fayetteville Lateral of 841,000 MMBtu per day. The Commission subsequently granted Texas Gas authority to increase the Fayetteville's maximum design capacity to 967,000 MMBtu per day⁴ and amended Texas Gas's certificate to allow an increase in the initial rates due to the increase in design capacity.⁵ The Greenville Lateral has a maximum design capacity of 768,000 MMBtu per day to transport gas from Texas Gas's mainline to pipeline interconnects in Mississippi. The first sixty-six miles of the Fayetteville Lateral from Conway County, Arkansas to the Bald Knob area in White County, Arkansas are currently in service.

5. In this proceeding Texas Gas proposes to construct two new compressor stations and make certain modifications at its existing Greenville Compressor Station near Greenville in Washington County, Mississippi to satisfy the increased production demands from the Fayetteville Shale production area. Texas Gas states that it designed this compression project to deliver 1.3 billion cubic feet (Bcf) per day of firm capacity from Southwestern Energy Services Company's (Southwestern) Fayetteville Shale natural gas production field in Arkansas through the Texas Gas system to several interconnects at Kosciusko, Mississippi, which include the following interstate pipelines: CenterPoint Energy Gas Transmission Company, Natural Gas Pipeline Company of America, Texas Eastern Transmission, LP, Gulf South Pipeline Company, LP, Mississippi River Transmission Corporation, ANR Pipeline Company, Columbia Gulf Transmission Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company. Texas Gas contends that the project will allow the natural gas producers to

³ See *Texas Gas Transmission, LLC*, 123 FERC ¶ 61,118 (2008).

⁴ See *Texas Gas Transmission, LLC*, 125 FERC ¶ 62,030 (2008).

⁵ See Letter Order dated September 18, 2008 in Docket No. CP07-417-003.

provide natural gas to the consuming markets in the Midwest and Eastern regions of the United States.

A. The Facilities

6. The proposed Bald Knob Compressor Station will be located near Bald Knob in White County, Arkansas, adjacent to Texas Gas's Fayetteville Lateral. Texas Gas proposes to install two 13,330-horsepower (hp) (15,000 nominal hp) turbine compressor units at the Bald Knob station designed to increase the capacity on the Fayetteville Lateral to approximately 1.3 Bcf per day for deliveries eastward to interconnect with the existing Texas Gas mainline in Coahoma County, Mississippi. The Bald Knob Compressor Station and the appurtenant yard and station piping will be constructed on an approximate 60-acre parcel which Texas Gas intends to purchase.

7. The proposed Isola Compressor Station will be located near Isola in Humphreys County, Mississippi adjacent to Texas Gas's Greenville Lateral. The Isola Compressor Station will consist of one 13,330-hp turbine compressor unit designed to increase the lateral's maximum capability to approximately 1.0 Bcf per day for deliveries to several interconnects near Kosciusko in Attala County, Mississippi. The Isola Compressor Station and the appurtenant facilities will be constructed on an 81-acre parcel of land which Texas Gas intends to acquire.

8. Texas Gas's Greenville Compressor Station is an existing compressor station located near Greenville in Washington County, Mississippi, adjacent to Texas Gas's 36-inch mainline and the Greenville Lateral and occupies 45.8 acres, of which only 0.3 acres will be affected by the proposed modifications. Texas Gas proposes to install two ten-inch diameter headers to connect two reciprocating engines to the existing yard and station piping discharging to the Greenville Lateral. In addition, Texas Gas proposes to extend the yard and station piping to connect a T-2 turbine engine to the Greenville Lateral. Lastly, Texas Gas proposes to upgrade an existing check meter station by including a new 16-inch ultrasonic meter, various fittings, valves, and ancillary equipment. Texas Gas asserts that these modifications will allow additional system flexibility.

9. Texas Gas intends to place the project facilities in service by late 2009 for the 2009-2010 winter heating season. The estimated capital cost of the proposed project is \$162,000,000.

B. Precedent Agreements

10. Texas Gas entered into transportation agreements with Chesapeake Energy Corporation (Chesapeake) and XTO Energy Inc. (XTO) for capacity created by the

proposed project. The transportation agreement with Chesapeake provides for firm transportation for 100,000 MMBtu per day for a primary term commencing April 1, 2010 and continuing through December 31, 2018. The first agreement with XTO provides for an initial maximum daily quantity of 50,000 MMBtu per day that ramps up to 300,000 MMBtu per day for a primary term commencing on either January 1, 2009 or the first day of the month following the date that the Fayetteville and Greenville Laterals are placed into service and continuing through December 31, 2018. The second XTO agreement provides for 25,000 MMBtu per day for a primary term commencing on either January 1, 2009 or the first day of the month following the date that the Fayetteville and Greenville Laterals are placed into service and continuing through December 31, 2011.

11. In addition, Southwestern and Petrohawk Energy Corporation (Petrohawk) exercised options in their existing precedent agreements for capacity on the Fayetteville and Greenville Laterals to acquire additional capacity created by the proposed project.⁶

12. Texas Gas states that the contracts with these four shippers will fully utilize the project's available capacity.

II. Notice, Interventions and Protests

13. Notice of Texas Gas's application was published in the *Federal Register* on September 16, 2008 (73 Fed. Reg. 53,415). Duke Energy Corporation on behalf of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., ProLiance Energy, LLC, Atmos Energy Corporation, Chesapeake Energy Corporation, Louisville Gas & Electric Company, Western Tennessee Municipal Group,⁷ the Jackson Energy Authority, City of

⁶ Texas Gas entered into a precedent agreement with Southwestern for firm transportation of up to 500,000 MMBtu per day on the Fayetteville and Greenville Laterals. The agreement's primary term is ten years and Southwestern agreed to pay a negotiated rate. Moreover, under the agreement, Southwestern has the right to increase its maximum daily quantity by up to an additional 300,000 MMBtu per day. *See Texas Gas Transmission, LLC*, 123 FERC ¶ 61,118, at P 8 (2008).

⁷ The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas: City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas

(continued...)

Jackson, Tennessee, and the Kentucky Cities⁸ filed timely, unopposed motions to intervene in the proceeding.⁹ No protests or comments were filed.

III. Discussion

14. Since Texas Gas's proposed project involves the transportation of natural gas in interstate commerce, the construction, ownership, and operation of the facilities are subject to the jurisdiction of the Commission and the requirements of NGA sections 7(c) and (e).

A. Application of the Certificate Policy Statement

15. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.¹⁰ The Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.¹¹

Department, Martin, Tennessee; Town of Maury, Maury City, Tennessee; City of Munford, Munford, Tennessee; and City of Ripley Natural Gas Department, Ripley, Tennessee.

⁸ The Kentucky Cities are the Cities of Carrollton, Henderson, and Murray, Kentucky, all distributor-customers of Texas Gas.

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214 (2008).

¹⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Policy Statement), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

¹¹ *See* Policy Statement at 61,736.

16. Under this policy, the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing expansion projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.¹² The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline.¹³ 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.

17. Texas Gas's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed herein, review of Texas Gas's proposal demonstrates that projected revenues at the proposed rate will exceed projected costs, thus ensuring the project will not be subsidized by existing customers using the Fayetteville and Greenville Laterals. Texas Gas is required to separately account for the project's costs to ensure that existing customers will not be adversely affected. Additionally, Texas Gas's project will not adversely affect the quality of service to existing shippers.

18. Similar to our finding when authorizing construction of the Fayetteville and Greenville Laterals, we find that increasing capacity on the laterals will provide additional transportation capacity and outlets for newly developed reserves and therefore the proposed facilities will enhance competition and ease existing and anticipated pipeline constraints in production areas of central Arkansas. Since Texas Gas designed the proposed facilities to transport a new source of gas, service on the facilities will not replace any firm transportation service on any other existing pipeline and thus the project will not adversely impact other pipelines or their customers.

19. Texas Gas has minimized impacts on landowners and communities since construction of the Bald Knob and Isola Compressor Stations will occupy land which Texas Gas already owns or has an option to purchase. Texas Gas has held informational sessions near the project area to allow an opportunity for the public to learn about the

¹² *See id.* at 61,745.

¹³ *See id.*

proposed project and express its concerns. No landowner filed a comment with the Commission concerning the project.

20. Based on the benefits that the project will provide and the minimal adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds that the public benefits from the project outweigh any adverse effects and approval of the project is required by the public convenience and necessity.

B. Cost and Financing

21. Texas Gas states that the project will be primarily supported by agreements with Chesapeake and XTO. Texas Gas also accepts the financial risks associated with the project.

22. As detailed in Exhibit K of the application, the estimated total cost for the proposed project is approximately \$162,000,000. The project's financing is based on a capital structure consisting of 36.59-percent debt and 63.41-percent equity, as detailed in Exhibit N.¹⁴ Texas Gas proposes that the equity component of its capacity structure earn a return of 9.46 percent.

23. The Commission finds that the capital costs utilized in the cost of service calculations in Texas Gas's current application are reasonable as they are the same components used for Texas Gas's incremental rates for the Fayetteville and Greenville Laterals in Docket No. CP07-417 and for the recently approved Rate Schedules NNL and SGL in Docket No. RP08-371.¹⁵

C. Rates

1. Recourse Rates and Negotiated Rates

24. Texas Gas requests the authority to charge its existing incremental rates for service on the Fayetteville and Greenville Laterals as the recourse rates for the Fayetteville Shale Compression Project. The Commission confirms that the Fayetteville and Greenville Laterals would be capable of transporting an additional 1.3 Bcf/day and 1.0 Bcf/day,

¹⁴ Exhibit L, where the capital structure is usually set forth in an application, was omitted.

¹⁵ See *Texas Gas Transmission, LLC*, 123 FERC ¶ 61,319 (2008).

respectively, as a result of the proposed project, thereby providing additional transportation capacity for gas produced in the Fayetteville Shale in north central Arkansas and providing access to the Midwest, Northeast, and Southeast markets.

25. As discussed in this order, the Commission finds that because the revenues recovered from the Fayetteville Shale Compression Project will exceed the projected project costs, existing mainline shippers will not subsidize the project. Therefore, the Commission will authorize Texas Gas to charge its existing incremental rates for the Fayetteville and Greenville Laterals as the recourse rates for the Fayetteville Shale Compression Project.

26. Texas Gas proposes to enter into negotiated rate agreements for service using the project's capacity. In certificate proceedings, initial recourse rates are established but no determinations are made regarding specific negotiated rates for proposed services.¹⁶ To comply with the Alternative Rate Policy Statement¹⁷ and our decision in *NorAm Gas Transmission Company*,¹⁸ Texas Gas is directed to file its negotiated rate contracts, or numbered tariff sheets, not less than thirty days or more than sixty days, prior to the commencement of service, stating for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreement does not deviate in any material respect from the form of service agreement in Texas Gas's *pro forma* tariff. Texas Gas must also disclose all consideration received that is associated with the agreement. Finally, Texas Gas must also maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case.

¹⁶ *CenterPoint Energy - Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

¹⁷ *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, 1998 U.S. App. LEXIS 20697 (D.C. Cir. 1998).

¹⁸ *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

2. Rolled-in Rate Determination

27. Texas Gas also seeks a pre-determination that it may roll in the costs of the proposed project into its Commission-approved incremental rates for service on the Fayetteville and Greenville Laterals during its next general rate case.¹⁹ Texas Gas contends that, as designed, rolling the costs into the lateral incremental rates would not adversely affect any customer on Texas Gas. Texas Gas further contends that rolling the costs into the existing lateral incremental rates is consistent with Commission policy because it will (i) protect existing customers from subsidizing the project; (ii) lower the rates for the Fayetteville and Greenville Lateral customers in the next rate case; and (iii) ensure that adequate revenue will be produced to cover the annual cost of service.

28. Texas Gas states that it calculated the rolled-in rates by adding the total cost of service for the instant project to the approved Fayetteville and Greenville Laterals annual cost of service, and by adding the billing determinants for the instant project to the approved Fayetteville and Greenville Laterals billing determinants, based on 100 percent load factor for the project transmission capacity. When the total project's estimated annual cost of service, as well as the total project's billing determinants, are rolled-in, the rate calculations result in a reduction to the Fayetteville Lateral rate from \$0.3474 per MMBtu to \$0.2961 per MMBtu, and a reduction to the Greenville Lateral rate from \$0.3091 per MMBtu to \$0.2788 per MMBtu.

29. Based on the cost data provided by Texas Gas, the Commission grants Texas Gas a pre-determination that it may roll the costs of the Fayetteville Shale Compression Project into its incremental rates for service on the Fayetteville and Greenville Laterals during its next general rate case, subject to the conditions in this order. This predetermination of rolled-in rate treatment is subject to re-examination in a future general NGA section 4 rate proceeding.

30. To ensure that all parties have full knowledge of the costs and benefits attributable to the Fayetteville Shale Compression Project, Texas Gas is required to maintain an

¹⁹ In the instant application, Texas Gas has submitted two rolled-in analyses for both Fayetteville and Greenville Laterals. The first rolled-in rate analysis was based on the rates proposed in its original application in Docket No. CP07-417-000 and approved in the May 2 Order. The second rolled-in analysis was based on the rates proposed in the amended application in Docket No. CP07-417-003. Inasmuch as the amended application has since been accepted in the Letter Order dated September 18, 2008, the Commission will consider Texas Gas's rolled-in analysis based on the rates proposed and accepted in Docket No. CP07-417-003.

accounting of the costs and revenues associated with the incremental expansion facilities in accordance with section 154.309 of the Commission's regulations.²⁰ This accounting includes the formulae and bases used in the allocation of common costs to each incremental facility. This requirement will ensure that the costs and revenues associated with the Fayetteville Shale Compression Project can be identified and challenged, if necessary, in any future NGA section 4 or 5 rate cases. With such information, the parties and the Commission could determine the project costs, protect existing shippers from cost overruns, and identify any change in material circumstances that would warrant a re-examination of rolled-in rate treatment.

31. Texas Gas is also directed to comply with the reporting requirements set forth in Order No. 710.²¹ Specifically, with regard to incremental facilities, pipelines are required to report the following on FERC Form No. 2: (1) the name of the facility; (2) the docket number under which the facility was approved; (3) the type of rate treatment (e.g., incremental or another rate treatment); (4) the amount of plant in service; (5) the amount of accumulated depreciation; (6) the amount of accumulated deferred income taxes; (7) amount of operating expenses; (8) the amount of maintenance expenses; (9) the amount of depreciation expense; (10) incremental revenues; and (11) other expenses.

3. Fuel Rate

32. Texas Gas also proposes to charge an initial aggregate fuel rate for all capacity using the Fayetteville and Greenville Laterals. Texas Gas proposes a fuel rate of 0.38 percent for the Fayetteville Lateral and 0.48 percent for the Greenville Lateral, both of which would become effective when the Fayetteville Shale Compression Project is placed into service. These proposed rates would replace the existing fuel rate of 0.1 percent for the Fayetteville Lateral and 0.37 percent for the Greenville Lateral. Texas Gas states that existing shippers on the Fayetteville and Greenville Laterals will not subsidize or be adversely affected by the proposed fuel rates because those shippers have negotiated contracts with fixed fuel rates. Further, Texas Gas states that the proposed aggregate fuel rates are consistent with those contained in the negotiated rate agreements related to the original Fayetteville and Greenville expansions.

33. Texas Gas contends that aggregating the fuel rate ensures that, in the future, any customers that wish to contract for capacity under the Lateral Incremental Rates will

²⁰ 18 C.F.R. § 154.309 (2008).

²¹ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

receive the same fuel rate. Further, Texas Gas asserts that aggregating the fuel rate will provide a more competitive rate to new customers. Finally, Texas Gas argues that if the fuel rate is not aggregated and an incremental fuel rate is charged for the capacity added by the instant project, then the incremental fuel rate would be approximately 1.43 percent on the Fayetteville Lateral and 1.05 percent on the Greenville Lateral. Texas Gas requests that the proposed aggregate fuel rates remain fixed through October 31, 2011, after which the fuel rates would become subject, on a separately identified basis, to Texas Gas's fuel tracker.

34. Texas Gas's proposal would change the rates of existing Fayetteville and Greenville Lateral customers. Such a change can only be made in a section 4 or 5 proceeding, not in a section 7 certificate rate proceeding. Further, Texas Gas has not supported the incremental fuel rates of 1.43 percent on the Fayetteville Lateral and 1.05 percent on the Greenville Lateral. Accordingly, just as the Commission has authorized Texas Gas to charge its existing incremental recourse rates for the Fayetteville and Greenville Laterals as the recourse rates for the Fayetteville Shale Compression Project, so here, the Commission shall establish the already approved fuel rates for the Fayetteville and Greenville Laterals as the fuel rates for the Fayetteville Shale Compression Project. The rates already approved are 0.1 percent for the Fayetteville Lateral and 0.37 percent for the Greenville Lateral. Texas Gas is directed to charge these fuel rates for the Fayetteville Shale Compression Project.

35. Further, Texas Gas has not demonstrated how, without an annual review and true-up mechanism, shippers will be protected from fuel overcharges, or how one class of customers might be protected from subsidizing another. The Commission also rejects that aspect of Texas Gas's proposal to delay the implementation of its annual tracker mechanism on the Fayetteville and Greenville Laterals until October 31, 2011. Section 16 of the General Terms and Conditions (GT&C) of Texas Gas's tariff sets forth the procedures and mechanism for Texas Gas to track fuel use and lost and unaccounted for gas based on service, type, zone, and season. Texas Gas is directed to include fuel and lost and unaccounted for gas on the Fayetteville and Greenville Laterals, on an incremental basis, in its annual fuel tracker, as provided by GT&C section 16.

D. Tariff

36. Texas Gas filed one pro forma tariff sheet, Pro Forma Sheet No. 35A, which sets forth the incremental recourse rates for both the Fayetteville and Greenville Laterals. The Commission notes that the fuel rates set forth on the pro forma tariff sheet are not the aggregated fuel rates Texas Gas proposes in the instant application but the already approved fuel rates for the Fayetteville and Greenville Laterals.

37. The Commission accepts Pro Forma Sheet No. 35A and directs Texas Gas to file an actual tariff sheet consistent with the pro forma tariff sheet, no more than sixty days and no less than thirty days, prior to the in-service date of the Fayetteville Shale Compression Project.

E. Environmental Analysis

38. On September 26, 2008, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Fayetteville Shale Compressor Station Project and Request for Comments on Environmental Issues* (NOI). In response to the NOI the Commission received one comment on environmental issues from the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP).

39. To satisfy the requirements of the National Environmental Policy Act, the Commission's staff prepared an environmental assessment (EA) which was placed into the public record on January 23, 2009. The EA addressed the project's purpose and need, geology, soils, water resources, wetlands, vegetation, fish and wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality and noise, and alternatives. The EA also addressed the substantive issues raised in the scoping comment letter.

40. The MDWFP commented that impacts on wetlands should be minimized; and that if best management practices are implemented, particularly measures to prevent or at least minimize negative impacts to water quality, the project would likely pose no threat to state listed species or their habitats. As described in the EA, Texas Gas proposes to construct its project using the best management practices described in our Upland Erosion Control, Revegetation and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures and to develop and implement a project-specific Stormwater Pollution and Prevention Plan. The EA determined that the implementation of the measures in these plans will minimize impacts due to construction and operation of the project. The EA also found that no waterbodies or wetlands will be affected by project construction or operation; therefore, special construction methods for work in these resources are not required.

41. Based on the analysis in the EA, the Commission has determined that if Texas Gas constructs the facilities in accordance with its application and supplements and the mitigation measures included in Appendix B to this order, approval of this project will not constitute a major federal action significantly affecting the quality of the human environment.

42. Any state or local permits issued with respect to facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages

cooperation between interstate pipelines and local authorities. This does not mean, however, 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.²²

IV. Conclusion

43. For the reasons discussed above, the Commission finds Texas Gas's construction and operation of the proposed Fayetteville Shale Compression Project will outweigh any potential adverse effects, that the proposed project is consistent with the Commission's Certificate Policy Statement, and that the proposed project including the proposed abandonment is required and permitted by public convenience and necessity. Furthermore, the Commission finds that, absent a significant change in circumstance, the costs associated with the project will qualify for rolled-in rate treatment when Texas Gas makes a future NGA section 4 rate filing to recover these costs.

44. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

The Commission orders:

(A) In Docket No. CP08-467-000, a certificate of public convenience and necessity is issued to Texas Gas under NGA section 7(c) authorizing the construction, ownership and operation of the Fayetteville Shale Compression Project as conditioned herein and subject to the environmental conditions set forth in the appendix to this order.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned on:

(1) Texas Gas's completion of the authorized construction of the proposed facilities and making them available for service within twelve months of issuance of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) Texas Gas's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 285 and subsections (a), (c), (e), and (f) of section 157.20 of the regulations;

²² See *Schneidewind v. ANR Pipeline*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) Texas Gas's compliance with the environmental conditions listed in the appendix.

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

(D) Texas Gas is granted a predetermination of rolled-in rate treatment for the costs of the construction, operation, modification, and abandonment of certain facilities authorized by this order in a future NGA section 4 rate proceeding, provided there are no significant changes in the relevant facts and circumstances forming the basis for this predetermination.

(E) Texas Gas's proposal to change its fuel rates is denied.

(F) Texas Gas shall file with the Commission a tariff sheet consistent with Pro Forma Sheet No. 35A, no more than sixty days and no less than thirty days, prior to the in-service date of the Fayetteville Shale Compression Project.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

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

1. Texas Gas shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the environmental assessment (EA), unless modified by this order. Texas Gas must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow:
 - a. the modification of conditions to the Commission's order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to ensure 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 Gas 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 or plot plans, and shall include all of the staff's recommended facility locations. **As soon as they are available and before the start of construction**, Texas Gas 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.

Texas Gas's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. Texas Gas's right of eminent domain granted under 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 Gas 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, and 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 **prior to construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements that 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. **Prior to the start of construction**, Texas Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Gas must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Gas 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 Gas 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 environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions Texas Gas will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Texas Gas's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Gas 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 mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Texas Gas shall file updated status reports with the Secretary on a **bi-weekly basis until all construction-related activities, including restoration, are complete for each part of the Project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. 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);
 - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;

- d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Texas Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Gas's response.
8. **Within thirty days of placing the certificated facilities in service**, Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Texas Gas has complied with or will comply with. This statement also shall 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.
9. Texas Gas must receive written authorization from the Director of OEP **before commencing service** on each compressor station. Such authorization will be granted only following a determination that rehabilitation and restoration of the project area is proceeding satisfactorily.
10. Texas Gas shall make all reasonable efforts to assure its estimated noise levels from the proposed Bald Knob and Isola Compressor Stations are not exceeded at all nearby NSAs and file noise surveys showing this with the Secretary **no later than sixty days** after placing the Bald Knob and Isola Compressor Stations in service. However, if the noise attributable to the operation of the new Bald Knob and Isola Compressor Stations at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, Texas Gas should file a report on what changes are needed and should install additional noise controls to meet that level **within one year** of the in-service date. Texas Gas should confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than sixty days** after it installs the additional noise controls.