

129 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP

Docket No. CP09-68-000

ORDER GRANTING ABANDONMENT AND ISSUING CERTIFICATE

(Issued November 19, 2009)

1. On February 27, 2009, Texas Eastern Transmission, LP (Texas Eastern) filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA)<sup>1</sup> for a certificate of public convenience and necessity, and related abandonment authority, to make modifications to its system through construction and abandonment of certain pipeline and compression facilities in Greene, Fayette, Bedford, Franklin, Adams, Lancaster, and York Counties, Pennsylvania. The proposed facility modifications will create an additional 455,000 dekatherms (Dth) per day of firm transportation capacity to provide service under the Texas Eastern Market Area Crossing (TEMAX) Project and the Texas Eastern Incremental Market Area Expansion III (TIME III) Project.<sup>2</sup> Texas Eastern also proposes to construct a 29-mile lateral – the 864,000 Dth per day Marietta Extension – extending from Texas Eastern’s Marietta Compressor Station to the proposed interconnect with the system of Transcontinental Gas Pipe Line, LLC (Transco).<sup>3</sup> Texas Eastern also proposes to charge incremental rates for services using the expanded capacity, including certain

---

<sup>1</sup> 15 U.S.C. § 717f (2006).

<sup>2</sup> The TEMAX and TIME III Projects were evaluated together in a single environmental assessment document for National Environmental Policy Act purposes, since the projects’ proposed facilities are in the same path and are expected to be placed into service on the same November 1, 2010 date.

<sup>3</sup> Expressed volumetrically, the capacity of the TEMAX and TIME III projects totals 447.1 million cubic feet per day (MMcfd) and the capacity of the Marietta Extension is 849 MMcfd.

capacity on the Marietta Extension not dedicated to the TEMAX and TIME III projects and unsubscribed by other shippers. We will authorize Texas Eastern's proposals, with appropriate conditions, as discussed below.

### **Background**

2. Texas Eastern is a natural gas transmission company engaged in the business of transporting gas in interstate commerce under authorizations granted by and subject to the Commission's jurisdiction. Texas Eastern's system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through the states of Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey to its principal terminus in the New York City metropolitan area.

3. Texas Eastern held an open season for the TEMAX Project from June 26 to July 31, 2006, which resulted in a precedent agreement with ConocoPhillips Company for 395,000 Dth per day of firm transportation service commencing on November 1, 2010, from receipt points: (1) at the proposed interconnection between the Texas Eastern system and the Rockies Express Pipeline L.L.C. (Rockies Express) system at Clarington, Ohio (Rockies Express Interconnect) and (2) at the proposed interconnection between the Texas Eastern system and the new Steckman Ridge, LP (Steckman Ridge) storage facility, to a delivery point on Transco's system at a proposed interconnection in the vicinity of Transco's Station 195 in York County, Pennsylvania (Transco Interconnect).

4. Following negotiation of its agreement with ConocoPhillips Company, Texas Eastern concluded that it had the ability to construct, concurrently, additional firm capacity from Texas Eastern's M2 market area to its M3 market area. Thus, Texas Eastern held an open season for the TIME III Project from May 19 to May 30, 2008. The TIME III open season resulted in precedent agreements with PPL Energy Plus, LLC and CenterPoint Energy Services, Inc. totaling 55,000 Dth per day of firm transportation service commencing on November 1, 2010, from a receipt point at Dominion Transmission, Inc.'s (Dominion) Oakford storage facility to the proposed Transco Interconnect.

5. In addition, Texas Eastern held a reverse open season for the TEMAX and TIME III Projects from June 30 to July 11, 2008, which resulted in no offers from its current firm shippers to release firm transportation entitlements to reduce the scope of the projects. Collectively, the agreements provide for 450,000 Dth per day of firm service to the TEMAX and TIME III shippers for a primary term of 10 years or greater.

### **Proposal**

6. Texas Eastern requests authorization to abandon by removal segments of its system between its Holbrook and Marietta Compressor Stations, in Greene and Lancaster Counties, Pennsylvania, respectively, consisting of 20-inch and 24-inch diameter pipeline

totaling approximately 24.2 miles in length and located in Greene, Bedford, Franklin, and Adams Counties, Pennsylvania. In place of the removed pipeline segments, Texas Eastern seeks authorization to construct 24.2 miles of 36-inch diameter pipeline. In addition, Texas Eastern proposes to construct 9.6 miles of new 36-inch diameter pipeline loop in Greene County.

7. Further, Texas Eastern proposes to uprate the maximum allowable operating pressure (MAOP), from 1,000 pounds per square inch gauge (psig) to 1,112 psig, of approximately 268 miles of existing Capacity Restoration Project (CRP) pipeline extending from Texas Eastern's Uniontown Compressor Station in Fayette County, Pennsylvania to its Marietta Compressor Station.<sup>4</sup> To effectuate the MAOP uprate, Texas Eastern seeks authorization to conduct hydrostatic retests of several segments of line that were not tested to 125 percent of MAOP during original construction and remediate actionable anomalies found during its inspections.

8. In addition to the pipeline facilities above, Texas Eastern proposes to install the 29-mile long Marietta Extension – a lateral extending from the discharge side of Texas Eastern's Marietta Compressor Station to the proposed Transco Interconnect. Specifically, Texas Eastern proposes to abandon by removal 1.7 miles of 24-inch diameter pipeline and construct in its place 1.7 miles of 36-inch pipeline, in Lancaster County. Texas Eastern also proposes to utilize 0.8 miles of existing 36-inch diameter pipeline and construct 26.5 miles of new 30-inch diameter pipeline, in York County.<sup>5</sup>

9. Texas Eastern proposes to install new compression and uprate compression horsepower (hp) totaling 93,933 hp at four existing compressor stations, including: (1) Holbrook Compressor Station in Greene County – install a new 13,333 hp gas turbine-driven compressor unit;<sup>6</sup> (2) Uniontown Compressor Station in Fayette County –

---

<sup>4</sup> In order to operate this portion of its system at an MAOP of 1,112 psig, Texas Eastern submitted, on September 11, 2008, a Special Permit application, as modified on December 22, 2008, to the U.S. Department of Transportation-Pipeline and Hazardous Materials Safety Administration (DOT-PHMSA) to increase the MAOP on segments of Texas Eastern's Lines 1 and 2. See Texas Eastern's July 17, 2009 response to Data Request No. 1 and Exhibit Z-2 of the application. Texas Eastern states that it expects to receive DOT-PHMSA approval by the end of 2009.

<sup>5</sup> Proposed appurtenant facilities include a meter station at the Transco Interconnect and new valve facilities and over-pressure protection facilities at various locations.

<sup>6</sup> Texas Eastern states that while the Holbrook Compressor Station will have three gas-fired turbine compressor units totaling 40,000 hp, it does not anticipate that waste heat generation is likely to be economical at this time. Texas Eastern explains that its  
(continued...)

install a new 20,000 hp electric-powered compressor unit and uprate an existing unit by 3,300 hp; (3) Chambersburg Compressor Station in Franklin County – install a new 27,000 hp electric-powered compressor unit and uprate an existing unit by 3,300 hp; and (4) Heidlersburg Compressor Station in Adams County – install a new 27,000 hp electric-powered compressor unit. Texas Eastern also seeks authority to abandon in place one 2,000 hp compressor unit at the Holbrook Compressor Station and three compressor units totaling 7,500 hp at the Chambersburg Compressor station for a total reduction of 9,500 hp. As a result, the proposed net increase in compression will be 84,433 hp.

10. The proposed facilities provide 395,000 Dth per day of capacity for the TEMAX Project contract path from Clarington, Ohio and the Steckman Ridge storage facility to the Transco Interconnect at the terminus of the Marietta Extension. The facilities also provide 60,000 Dth per day of capacity for the TIME III Project contract path from Dominion’s Oakford storage facility to the Transco Interconnect. Texas Eastern has negotiated rate agreements for the entire capacity of the TEMAX Project path and all but 5,000 Dth per day of the capacity of the TIME III Project path. However, the proposed Marietta Extension will have a capacity of 864,000 Dth per day, leaving 409,000 Dth per day of capacity unsubscribed from the Marietta Compressor Station to the Transco Interconnect.

11. Texas Eastern states that its proposal to install larger diameter pipeline for the Marietta Extension than is necessary to provide the 455,000 Dth per day of firm service assigned to the TEMAX and TIME III Projects is consistent with the Commission’s practice of encouraging construction of greenfield pipeline facilities with an eye to future demand growth.<sup>7</sup> Texas Eastern explains that the Marietta Extension is strategically

---

system is a winter peaking system. Over the past three years the Holbrook Compressor Station has operated at a load factor of 51 percent, but even if the station operates above the 60 percent load factor criteria, the very hilly terrain and space considerations present significant issues in locating waste heat and power generation facilities. However, Texas Eastern states that it maintains a website list of the gas turbine compressor stations on its system that have a total capacity of at least 15,000 hp and have operated at more than a 60 percent load factor over the preceding 12 months.

<sup>7</sup> Citing, e.g., *Maritimes & Northeast Pipeline, L.L.C.*, 76 FERC ¶ 61,124, at 61,674 (1996) (encouraging consideration of “the expansion potential for their projects so that a single pipeline, if constructed, is sized large enough to avoid the need for looping the pipeline in the foreseeable future”). In its, July 17, 2009 response to Data Request No. 2, Texas Eastern also cites *Maritimes & Northeast Pipeline, L.L.C.*, 99 FERC ¶ 61,277, at P 2 (2002) (allowing an increase in the size of the pipeline to “allow for the future expansion of the Algonquin and Maritimes systems with fewer environmental impacts”).

located on the Northeastern pipeline grid in the Mid-Atlantic States to provide shippers with delivery opportunities both upstream and downstream of Transco's Station 195, including direct access the New York City market through the Transco Interconnect. Texas Eastern concludes that significant market potential exists for firm and interruptible services on the Marietta Extension.

12. Texas Eastern estimates that the total combined cost for the proposal, including construction for TEMAX, TIME III, and the Marietta Extension, is \$646,618,000, with \$471,880,000 assigned to TEMAX; \$86,739,000 to TIME III; and \$87,999,000 to the unsubscribed capacity of the Marietta Extension (Marietta MX service). Costs of certain facilities, such as mainline replacement and looping as well as the CRP system uprate, necessary to provide the originally contemplated TEMAX service are all allocated to TEMAX service. Certain other compression facility costs required solely to provide incremental TIME III service are all allocated to TIME III service. The costs of certain shared compression facilities are volumetrically allocated between the TEMAX and TIME III services. The costs of the shared Marietta Extension facilities are volumetrically allocated among the TEMAX, TIME III, and Marietta MX services. The allocated construction costs for each of the three proposed services have been used to derive incremental rates.

13. Texas Eastern proposes to charge incremental recourse rates, under its Rate Schedule FT-1, of \$0.6588 per Dth for service on the TEMAX Project facilities, \$0.7654 per Dth for service on the TIME III Project facilities, and \$0.1027 per Dth for Marietta MX service utilizing the unsubscribed portion of the Marietta Extension facilities, all stated here on a 100 percent load factor basis. Texas Eastern also proposes to collect incremental fuel percentages and electric power costs for the services.

### **Interventions**

14. Notice of Texas Eastern's application was published in the *Federal Register* on March 18, 2009 (74 Fed. Reg. 11534). Nineteen parties filed timely, unopposed motions to intervene.<sup>8</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.<sup>9</sup> The Municipal Defense Group and Eastern Shore Natural Gas Company (separately) filed motions to intervene out of time showing an interest in this proceeding. Their intervention will not cause undue delay or unfairly

---

<sup>8</sup> A list of intervenors is attached as Appendix A to this order.

<sup>9</sup> 18 C.F.R. § 385.214(a)(3) (2009).

prejudice the rights of any other party. Accordingly, for good cause shown, we will permit their interventions.<sup>10</sup>

15. Emerald Coal Resources, L.P., Freeport Resources Corp., and Freeport Mining, LLC (collectively, Emerald/Freeport) protest and request that Texas Eastern be required to have a subsidence mitigation plan in coal mining areas. CONSOL Energy, Inc. (not an intervenor) also filed comments concerning potential subsidence issues in coal mining areas. Emerald/Freeport and Texas Eastern filed numerous answers, and answers to answers. Answers to answers are not allowed under our rules.<sup>11</sup> Nevertheless, we will accept Emerald/Freeport's and Texas Eastern's answers because these pleadings provide information that assists us in our decision making. We address the subsidence issues in the Environmental Analysis section of this order.

16. Delmarva Power & Light Company (Delmarva), and Exelon Corporation, on behalf of PECO Energy Company (PECO), filed comments and a protest, respectively, expressing concerns about odorized gas entering Transco's unodorized system at the Transco Interconnect and requesting a technical conference to resolve the issue.<sup>12</sup> Alternatively, PECO requests that the Commission condition approval upon execution of a satisfactory interconnection agreement addressing odorization issues for the Transco Interconnect. Delmarva and PECO have gas distribution systems that currently receive unodorized gas from Transco at delivery points downstream of the Transco Interconnect. Delmarva and PECO must odorize those volumes pursuant to DOT pipeline safety regulations. They argue that the proposal will result in varying levels of odorant in gas deliveries to their distribution systems from Transco, due to blending of Texas Eastern's odorized volumes with Transco's unodorized volumes, thus, presenting operational and safety issues.

17. Transco also filed comments stating that the receipt of odorized volumes from Texas Eastern would present operational problems, but stated that it would continue to work toward a mutually agreeable interconnection agreement. On September 21, 2009, Texas Eastern filed an executed interconnect agreement with Transco which provides that facilities will be installed to achieve a consistent blend of odorant at the delivery points

---

<sup>10</sup> 18 C.F.R. § 385.214(d) (2009).

<sup>11</sup> 18 C.F.R. § 385.213(a)(2) (2009).

<sup>12</sup> DOT regulations require that Texas Eastern odorize the gas on its system upstream of the Marietta Compressor Station, thus, odorized gas will be delivered at the Transco Interconnect near Transco's Station 195. Transco's system between Station 195 and Station 200 is currently unodorized. *See, e.g.*, Texas Eastern's November 19, 2008 letter included in Exhibit Z-3 of the application.

between the Transco Interconnect and Transco's Station 200, where Transco first begins odorizing the gas on that portion of its system. On September 30, 2009, Transco filed a notice of withdrawal of its comments. The execution of an interconnection agreement between Texas Eastern and Transco that provides for stabilized odorant levels in Transco's system downstream from the Transco Interconnect effectively moots the issues raised by Delmarva and PECO. Therefore, the requests for a technical conference and PECO's protest on this issue are dismissed.

18. On August 5 and 7, 2009, Emerald/Freeport filed Motions to Lodge with the Commission in this proceeding certain documents from two other proceedings. The August 5 Motion to Lodge involves a Memorandum to the Public File, Docket No. CP07-208-000 (Rockies Express), from a Commission staff member reflecting a request for review of Rockies Express's plan for construction over certain mining operations by the DOT-PHMSA and the response by the DOT-PHMSA providing guidelines for Rockies Express's plan proposed for "areas where mining operations will impact the operational integrity" of the pipeline.

19. The August 7 Motion to Lodge involves the Environmental Assessment issued by Commission staff in another proceeding, Docket No. CP09-18-000, the Dominion Hub III Project, along with Dominion's response to a data request issued in that proceeding by Commission staff. Emerald/Freeport states that the document discusses mining subsidence mitigation measures to be used in that proceeding pursuant to the Environmental Assessment issued therein. Emerald/Freeport states that the motions should be granted because the documents speak to "similar mining-related safety issues" as present in this proceeding and the Commission's decision-making process is thereby informed.<sup>13</sup>

20. The documents sought to be lodged are publicly available in the proceedings in which they have been filed and have been cited here by Emerald/Freeport.<sup>14</sup> Further, Emerald/Freeport's various pleadings in this proceeding, including their various answers and answers to answers which we have accepted because they assist us in understanding the issues here, include exhaustive treatments of the issues it has proposed for review, with special emphasis on subsidence mitigation measures, and cite to the Rockies

---

<sup>13</sup> See August 5 Motion to lodge at 2; August 7 Motion to Lodge at 5. *Citing Md. Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169 at P 30, *reh'g denied*, 125 FERC ¶ 61,340 (2008); *Ameren Energy Generating Co.*, 103 FERC ¶ 61,128, at P 17 (2003).

<sup>14</sup> See, e.g., Comments of Emerald/Freeport filed October 13, 2009, at page 2, n.4, and throughout.

Express and Dominion Hub III records as deemed necessary.<sup>15</sup> No good reason has been presented as to why the physical record in this proceeding should be needlessly expanded since Emerald/Freeport provides no clear indication in its Motions of what further specific and relevant assistance the documents would provide. Emerald/Freeport's Motions to Lodge will be denied.<sup>16</sup>

21. Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (ConEd/PGW) jointly filed a limited protest requesting that Texas Eastern be required to utilize rolled-in fuel retention percentages and rolled-in electric power charges for its TEMAX and TIME III Projects. PECO filed a protest requesting that the order be conditioned upon a satisfactory showing that there will be no subsequent subsidies by existing customers for the unsubscribed capacity on the Marietta Extension. Texas Eastern filed a motion for leave to answer and answer to ConEd/PGW's limited protest and that of PECO. Although our rules do not permit these kinds of responsive pleadings,<sup>17</sup> our rules do provide that we may, for good cause, waive this provision.<sup>18</sup> We find good cause to do so in this instance because Texas Eastern's pleading provides information that will assist us in our decisionmaking.

22. PECO protests the filing to the extent the application seeks approval of new pipeline capacity, specifically the Marietta Extension, for which there are no new customers. PECO requests the Commission condition any approval of the certificate upon protection of existing customers from excessive rates by placing the risk of cost recovery for the Marietta Extension on Texas Eastern.

23. ConEd and PGW in their limited protest argue that the Certificate Policy Statement<sup>19</sup> addresses fuel retention percentages and electric power costs, in addition to

---

<sup>15</sup> *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234, *reh'g denied*, 125 FERC ¶ 61,160, *reh'g granted and denied*, 128 FERC ¶ 61,045 (2009) (*REX-East*); *Dominion Transmission, Inc.*, 129 FERC ¶ 61,012 (2009) (*Hub III*). We note also that no final rehearing order has been issued in the Dominion Hub III proceeding, and thus reliance on the proceeding is appropriately limited.

<sup>16</sup> *See, e.g., Maritimes & Northeast Pipeline, L.L.C.*, 93 FERC ¶ 61,117, at 61,339 (2000).

<sup>17</sup> 18 C.F.R. § 385.213(a)(2) (2009).

<sup>18</sup> 18 C.F.R. § 385.101(e) (2009).

<sup>19</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

capital cost, calling for rolled-in fuel percentages and electric rates when the incremental percentage and rate are lower than the system rate. ConEd and PGW request that the Commission require Texas Eastern to use rolled-in, rather than incremental fuel retention percentages and electric rates for its TEMAX and TIME III projects.

24. The protests and answers are discussed in detail below.

### **Discussion**

25. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>20</sup> Since the facilities proposed for abandonment are used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of the facilities is subject to the requirements of subsection (b) of section 7 of the NGA.

### **Abandonment Authorization**

26. Texas Eastern proposes to abandon certain pipeline and compression facilities as part of the modification of its system to provide service for the TEMAX and TIME III Projects without degrading the service of existing shippers. The application shows that such abandonments are necessary components of the projects proposed and approved. Hence, we find that the abandonment is in the public convenience and necessity and approve the abandonment of facilities as described in this order and in the application.

### **Application of the Certificate Policy Statement**

27. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.<sup>21</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 pipeline facilities, we balance the public benefits against the potential adverse consequences. Our 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

---

<sup>20</sup> 15 U.S.C. §§ 717f(c), (e) (2006).

<sup>21</sup> Certificate Policy Statement, *supra*.

of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

28. 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 its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered.

29. As discussed below, Texas Eastern proposes to charge incremental recourse rates to recover the costs of the TEMAX and TIME III Projects as well as the costs of the unsubscribed capacity on the Marietta Extension. Thus, the proposal will not result in subsidization from Texas Eastern's existing customers. Texas Eastern has not sought to roll in the project costs nor has it provided any long-term revenue analysis. Therefore, if in the future Texas Eastern seeks to roll in the costs associated with the project, it must demonstrate that such roll-in will not result in any subsidization by existing customers.

30. There will be no adverse operational impact on Texas Eastern's existing customers, since the project is designed to provide the proposed expansion capacity without degrading service to existing customers. The expansion project is designed to enable new supplies of natural gas, including gas sourced in the Rocky Mountains, to reach Northeast markets to fulfill the growing demand for gas, and to provide shippers access to regional storage opportunities in Pennsylvania. Thus, no service on other pipelines will be displaced as a result of the proposal. Further, no pipeline objected to Texas Eastern's proposals. For these reasons, we conclude that existing pipelines and their customers will not be adversely affected by the expansion project.

31. Much of the pipeline removal and construction will take place in or adjacent to existing right-of-way (ROW). Compression additions and modifications will take place within existing compressor stations. Only the Marietta Extension, which will require approximately 155 acres of new permanent ROW out of the entire expansion project's need for about 187 permanent acres, is considered new pipeline and most of that pipeline will be constructed adjacent to an existing electric power transmission corridor. Therefore, we find that the effects on landowners and communities are minimized.

32. Texas Eastern has entered into long-term transportation agreements for all of the 395,000 Dth per day capacity of the TEMAX Project and all but 5,000 Dth per day of capacity of the TIME III Project. While 409,000 Dth per day of capacity is unsubscribed out of the total capacity of 864,000 Dth per day on the Marietta Extension, we find that constructing a larger capacity pipeline than necessary in such a location where future demand for service on the pipeline is likely to grow is appropriate as it will minimize potential environmental and landowner impacts that could occur in the future were a smaller pipeline constructed now.

33. Based on the benefits of the TEMAX and TIME III Projects, along with the entirety of the Marietta Expansion capacity, the lack of any identified adverse impacts on Texas Eastern's existing customers or on other pipelines and their customers, and minimized impacts on landowners and communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the Natural Gas Act, that the public convenience and necessity requires approval of Texas Eastern's proposal, subject to the conditions set forth herein.

### **Rates**

#### **Incremental Rates for TEMAX, TIME III, and Marietta MX Service**

34. Texas Eastern proposes to charge incremental recourse rates for service on the TEMAX Project facilities and the TIME III Project facilities, respectively. For Marietta MX service utilizing unsubscribed capacity on the Marietta Extension, Texas Eastern also proposes to charge initial incremental recourse rates for firm transportation service as well as a proposed interruptible service. Furthermore, shippers requesting service on TEMAX and TIME III facilities have agreed to pay fixed negotiated rates in accordance with section 29 of Texas Eastern's General Terms and Conditions (GT&C).

35. Texas Eastern proposes three separate initial incremental rates for: (1) the TEMAX Project (fully subscribed at 395,000 Dth per day); (2) the TIME III Project (60,000 Dth per day - all but 5,000 Dth per day subscribed); and (3) the Marietta MX capacity not associated with TEMAX and TIME III services (409,000 Dth per day of unsubscribed capacity). Texas Eastern has developed separate costs of service and recourse rates for each of the three incremental projects described below.

#### **TEMAX Project**

36. For the 395,000 Dth per day of service on the TEMAX Project facilities, Texas Eastern proposes to establish an incremental recourse rate based on the monthly reservation rate under Rate Schedule FT-1 of \$20.039 per Dth, exclusive of incremental fuel. Texas Eastern estimates that the facilities for the TEMAX Project will cost \$471,880,000. This rate is based on Texas Eastern's existing onshore transmission system depreciation rate of 1.22 percent, a return-on-equity of 12.75 percent, and an

overall rate of return of 12.13 percent which were derived from Texas Eastern's cost of service settlement, as amended in Docket Nos. RP98-198-000, et al., and approved by letter order issued on August 28, 1998.<sup>22</sup> Texas Eastern submitted a cost of service and rate design study showing the derivation of the incremental recourse rate is based on an incremental cost-of-service of \$94,985,173.<sup>23</sup> The Commission's cost-of-service analysis shows that the proposed rate of \$20.039 per Dth for service on the TEMAX Project facilities is reasonable as conditioned below exclusive of incremental fuel, electric, and all surcharges. Therefore, we will approve the TEMAX Project's incremental recourse rate. The 100 percent load factor rate will be \$0.6588 per Dth subject to all applicable charges and surcharges under Rate Schedule FT-1.

### **TIME III Project**

37. For the 60,000 Dth per day of service on the TIME III Project facilities, Texas Eastern proposes to establish an incremental recourse monthly reservation rate under Rate Schedule FT-1 of \$23.281 per Dth, exclusive of incremental fuel. Texas Eastern estimates that the facilities for the TIME III Project will cost \$86,739,000. Similar to the TEMAX Project, Texas Eastern based its rates on the existing onshore transmission system depreciation rate of 1.22 percent, a return-on-equity of 12.75 percent, and an overall rate of return of 12.13 percent which were derived from Texas Eastern's cost of service settlement, as amended in Docket Nos. RP98-198-000, et al., and approved by letter order issued on August 28, 1998.<sup>24</sup> Texas Eastern submitted a cost of service and rate design study showing the derivation of the incremental recourse rate based on an incremental cost-of-service of \$16,761,967.<sup>25</sup> The Commission's cost-of-service analysis shows that the proposed incremental rate of \$23.281 per Dth for service provided over the TIME III Project facilities is reasonable, as conditioned below, exclusive of fuel, electric, and all surcharges. Therefore, we will approve the TIME III incremental recourse rate. The 100 percent load factor rate will be \$0.7654 per Dth exclusive of all applicable charges and surcharges under Rate Schedule FT-1.

---

<sup>22</sup> *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

<sup>23</sup> Exhibit P (1) of the application.

<sup>24</sup> *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

<sup>25</sup> Exhibit P (2) of the application.

### Marietta MX Service

38. In order to obtain firm Marietta MX service on the unsubscribed portion of the Marietta Extension, Texas Eastern will require a shipper to execute an FT-1 service agreement, which will be subject to an incremental recourse rate, exclusive of incremental fuel. The contract path for this service would extend from the discharge side of the Marietta Compressor Station to the Transco Interconnect. Shippers will have secondary rights only on the Marietta Extension. In order to obtain interruptible Marietta MX service, a shipper will be required to execute an IT-1 service agreement, which will be subject to a recourse rate that covers Marietta MX service and the incremental fuel charge. Further, the customers under such agreements will have the right to ship on an interruptible basis on the Marietta Extension, but not elsewhere on the existing Texas Eastern system.

39. For the 409,000 Dth per day of Marietta MX service, Texas Eastern proposes to establish an incremental recourse monthly reservation rate under Rate Schedule FT-1 of \$3.124 per Dth, exclusive of incremental fuel. Texas Eastern allocates estimated costs of facilities for the Marietta MX service of \$87,999,000, based on a volumetric allocation of the total Marietta Extension costs. This rate is based on Texas Eastern's existing onshore transmission system depreciation rate of 1.22 percent, a return-on-equity of 12.75 percent, and an overall rate of return of 12.13 percent which were derived from Texas Eastern's cost of service settlement, as amended in Docket Nos. RP98-198-000, et al., and approved by letter order issued on August 28, 1998.<sup>26</sup> Texas Eastern submitted a cost of service and rate design study showing the derivation of the incremental recourse rate based on an incremental cost-of-service of \$15,331,021, which includes an allocation of \$1,000,000 to be recovered from interruptible transportation customers on the Marietta Extension.<sup>27</sup> The Commission's cost-of-service analysis shows that the proposed rate of \$3.124 per Dth for service provided over the Marietta Extension facilities is reasonable. Therefore, we will approve the Marietta MX incremental recourse rate as conditioned below exclusive of fuel, electric and applicable surcharge accounts. The 100 percent load factor rate will be \$0.1027 per Dth exclusive of to all applicable charges and surcharges under Rate Schedule FT-1. Further, Texas Eastern proposes to use the 100 percent load factor rate as the maximum rate for interruptible Marietta MX service.

---

<sup>26</sup> *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

<sup>27</sup> Exhibit P (3) of the application.

### **Reporting Incremental Rates**

40. To assure that costs are properly allocated between Texas Eastern's existing shippers and the three incremental services proposed in this proceeding, the Commission will require Texas Eastern to keep separate books and accounting of costs attributable to the proposed incremental services. Further, the books should be maintained with applicable cross-reference as required by section 154.309 of the Commission regulations. This information must be in 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 is provided consistent with Order No. 710 on incremental facilities.<sup>28</sup> Such measures protect existing customers 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.<sup>29</sup>

### **PECO's Protest of Marietta Extension**

41. PECO protests the filing to the extent the application seeks approval of new pipeline capacity, specifically for the Marietta MX service, for which there are no new customers. PECO requests the Commission condition any approval of the certificate upon protection of existing customers from excessive rates by placing the risk of cost recovery for the Marietta Extension on Texas Eastern. Texas Eastern answers that it has not proposed to recover the cost of the unsubscribed capacity from shippers that have not contracted to utilize the Marietta Extension capacity.<sup>30</sup> Texas Eastern is not proposing to recover the cost of the unsubscribed capacity from its existing shippers, and they are not being asked to subsidize the project. Rather, Texas Eastern proposes to recover the new project cost from future shippers which it believes will be attracted to this new option to

---

<sup>28</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Statutes and Regulations, ¶ 31,267 at P 23 (2008), stated in regard to incremental facilities that pipelines were required to:

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

<sup>29</sup> 18 C.F.R. § 154.309 (2009).

<sup>30</sup> Texas Eastern Answer at p. 13.

access the New York City market and Northeastern pipeline grid. Therefore, Texas Eastern claims it is unnecessary to condition any certificate authorization in this proceeding per PECO's request. Texas Eastern further states that the rates for TEMAX, TIME III and Marietta MX services are based on the total cost of the proposed facilities. Specifically, the incremental rates are based on costs and billing determinants equal to the entire capacity associated with the TEMAX, TIME III and Marietta MX services.

42. We agree with Texas Eastern. There is no need to condition Texas Eastern's certificate as PECO requests as the incremental recourse rates for the proposed services are properly designed to ensure that existing shippers will not subsidize the services, including the Marietta MX service. If, in the future, Texas Eastern seeks to roll in the costs associated with any of the three proposed incremental rate services, Texas Eastern will have to demonstrate that such a change in pricing will not result in existing customers subsidizing the project.

### **Negotiated Rates**

43. Texas Eastern proposes negotiated rate agreements with its shippers. In certificate proceedings, we establish initial recourse rates, but do not make determinations regarding specific negotiated rates for proposed services.<sup>31</sup> In order to comply with the Alternative Rate Policy Statement,<sup>32</sup> and the Commission's decision in *NorAm Gas Transmission Company (Noram)*,<sup>33</sup> we will direct Texas Eastern to file either the negotiated rate agreements or a tariff sheet describing the negotiated rate agreements. If a negotiated rate agreement contains material deviations from the pipeline's form of service agreement, the pipeline must file and clearly delineate the differences between the negotiated rate agreement and its form of service agreement in redline and strikeout. If a negotiated rate agreement does not contain any material deviations from the form of service agreement, the pipeline may elect to file a tariff sheet reflecting the terms of the

---

<sup>31</sup> *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).

<sup>32</sup> *Alternatives 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 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).

<sup>33</sup> 77 FERC ¶ 61,011 (1996) (*NorAm*).

agreement together with a statement that the agreement conforms in all material respects with its form of service agreement.

44. The tariff sheets must state for each shipper paying a negotiated rate the following information: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; (6) any formula upon which the negotiated rate is designed; and (7) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of service agreements in its tariff. The Commission directs Texas Eastern to file either its negotiated rate agreements or a tariff sheet fully describing the transactions no sooner than 60 days and no later than 30 days before service commences. Further, Texas Eastern is required to abide by the terms and reporting requirements of the Alternative Rate Policy Statement as it may be modified from time to time.

45. Texas Eastern must also disclose all considerations linked to the agreements. In addition, Texas Eastern is required to maintain separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates for the project in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceedings. When Texas Eastern files negotiated rate tariff sheets under section 4 of the NGA, interested parties may protest if they believe the rates are discriminatory.

### **Fuel Costs**

46. Texas Eastern proposes to recover fuel use and lost and unaccounted for fuel (LAUF), as well as electric power costs associated with providing service on the TEMAX and TIME III Project facilities, through incremental Applicable Shrinkage Adjustment (ASA) percentages and incremental Electric Power Cost (EPC) rates<sup>34</sup> consistent with Commission policy and precedent. Marietta MX service will be subject to an ASA percentage comprised solely of the applicable system LAUF percentage.<sup>35</sup> Texas Eastern states that it will track changes in fuel and electric power costs for the proposed new services on an incremental basis through its ASA mechanism set forth in section 15.6 of its GT&C and through its EPC Adjustment mechanism set forth in section 15.1 of its GT&C. Texas Eastern states that it will adjust its periodic tracker mechanisms to ensure that existing customers do not subsidize the costs resulting from these new incremental services as required by the Commission.

---

<sup>34</sup> Pro Forma Tariff Sheet Nos. 35C and 35D of the application.

<sup>35</sup> Pro Forma Tariff Sheet No. 35E of the application.

### **ConEd and PGW's Protest of Fuel Costs**

47. ConEd and PGW protest Texas Eastern's proposal to use an incremental ASA percentage and an incremental EPC rate for its proposed TEMAX, TIME III and Marietta MX services. However, ConEd and PGW state they have no objection to the construction and operation of the TEMAX, TIME III, and Marietta MX facilities. ConEd and PGW request that the Commission require that Texas Eastern utilize a rolled-in fuel retention percentage and a rolled-in electric power charge for its proposed projects. ConEd and PGW claim that Texas Eastern's incremental fuel use recovery proposal will deny its existing shippers the benefits of the low-cost expansion capabilities provided by the system facilities and paid for by the existing customers and, therefore, is contrary to Commission policy and precedent. ConEd and PGW point out that Texas Eastern's application, Exhibit Z-4, reveals that the proposed ASA percentages for the TEMAX and TIME III Zone M2-M3 projects are 0.69 percent and 0.80 percent respectively. In contrast, Texas Eastern's system ASA percentage is 4.3 percent for a Zone M2-M3 transportation path movement. Further, they state that the exhibit also reflects Texas Eastern's estimate of the electric costs of the project, but proposes no increase/decrease (0.00 percent) to the incremental EPC charge.

48. In its answer, Texas Eastern states that its proposal to charge initial incremental recourse rates for service, as well as incremental ASA percentages and EPC rates to recover incremental fuel use, LAUF, and electric power costs is consistent with Commission policy and precedent. Under the Commission's Certificate Policy Statement, the pipeline customers who benefit from new pipeline facilities and increased fuel and electrical usage should bear the burden of those costs. The threshold policy requirement for an expansion project is that the project must be able to stand on its own financially without subsidies from its existing customers. The Certificate Policy Statement creates a presumption in favor of incremental rate treatment of the costs associated with expansions if the expansion costs would result in an increased rate for existing customers. Importantly, Texas Eastern continues, this presumption also applies to additional fuel and electric costs associated with new or expanded facilities,<sup>36</sup> and Commission decisions have recognized that fuel and power usage, whether increased or

---

<sup>36</sup> Citing, e.g., *PG&E Gas Transmission*, 99 FERC ¶ 61,366, at P 29 (2002) (stating that the Commission's policy applies to both expansion fuel costs and rates for service).

decreased, should be included in any analysis in which rolled-in treatment of rates is being considered.<sup>37</sup>

49. Texas Eastern further states that not only does the Commission include fuel cost in a rolled-in rate analysis, the Commission also evaluates any increase or decrease in both fuel and transportation costs on a net-benefit basis, and only if the net benefit favors existing shippers will the Commission allow rolled-in rate treatment.<sup>38</sup> As to the issue of cheap expandability, Con Ed and PGW are attempting to isolate the fuel costs from the proposed incremental transportation rate. In this instance, Texas Eastern's proposed transportation rates for the TEMAX and TIME III Projects, plus the fuel and electric power costs, are more than twice the current system rate for the Zone M2–M3 transportation path for existing customers. Since the Commission considers the fuel costs an element of a shipper's overall transportation expense, the proposed TEMAX and TIME III incremental rates protect the existing customers from paying for and subsidizing the expansion.

50. The Commission has approved similar incremental rate designs, including incremental fuel, in previous Texas Eastern expansion filings. Texas Eastern currently charges an incremental fuel percentage and electric power cost adjustment for service on the TIME facilities<sup>39</sup> and, similarly, on its TIME II facilities.<sup>40</sup> Consistent with the Commission's finding in the *TIME Certificate Order*<sup>41</sup> and with the approved design for recovery of fuel and EPC costs in the order approving Texas Eastern's TIME II Project,<sup>42</sup> Texas Eastern has assigned the costs of the TEMAX and TIME III Projects, including

---

<sup>37</sup> Citing, e.g., *Northern Border Pipeline Co.*, 112 FERC ¶ 61,196, at P 23 (2005) (finding that an increase in fuel costs should be included in the rolled-in rate analysis, because fuel costs are an element of a shipper's transportation expense); *Southern Natural Gas Co.*, 102 FERC ¶ 61,134, at P 22 (2003) (finding that the cost of fuel must be included in the rolled-in analysis because fuel rates are an element of transportation expenses); *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001).

<sup>38</sup> Citing *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137, at P 32 (2007).

<sup>39</sup> Texas Eastern Transmission, LP, FERC Gas Tariff, Seventh Revised Volume No. 1, Thirty-First Revised Sheet No. 35A.

<sup>40</sup> *Id.* at Sixth Revised Sheet No. 35B.

<sup>41</sup> *Texas Eastern Transmission, LP*, 99 FERC ¶ 61,383, at P 35 (2002) (*Time Certificate Order*).

<sup>42</sup> *Texas Eastern Transmission, LP*, 119 FERC ¶ 61,258 (2007).

fuel and electric power costs, to the customers benefitting from the service by proposing incremental rates for service and incremental ASA percentages and EPC rates for services on the proposed facilities. Consistent with the Commission's finding in previous Texas Eastern proceedings approving incremental rate design and fuel charges, we will not depart from that policy here. ConEd and PGW's request for rolled-in fuel retention percentage and a rolled-in electric power charge for the proposed projects is denied.

51. The Commission will require that Texas Eastern separately track the operating costs and the fuel costs to the incremental customers benefitting from the service. In order to track accurately the charges and surcharges resulting from the incremental services using the TEMAX, Time III, and Marietta MX facilities, Texas Eastern is directed to make adjustments in its tracking mechanisms as necessary to ensure that existing customers do not subsidize the costs resulting from these new incremental services. This includes insuring that actual deviations from its estimated fuel use and lost and unaccounted for fuel, as well as electric power costs related to the TEMAX, TIME III and Marietta MX services are in place prior to commencement of the proposed services.<sup>43</sup> Shippers can then review these costs in Texas Eastern's periodic rate adjustment tracker filings, to ensure that the existing customers do not subsidize the costs resulting from the new incremental services, and track these incremental fuel costs in Texas Eastern's annual fuel use tracking filing.

52. At least thirty days but not more than sixty days prior to commencing service on the TEMAX, TIME III, and Marietta MX facilities, Texas Eastern must file actual tariff sheets setting forth its incremental recourse rates and fuel costs.

### **Interruptible Service for TEMAX and TIME III Projects**

53. While Texas Eastern's application and tariff sheets discuss Marietta MX interruptible transportation, it does not discuss the applicable rate for interruptible TEMAX or TIME III transportation services. The Commission's open-access regulations require that jurisdictional pipelines that offer firm transportation service must also offer interruptible transportation service.<sup>44</sup> Accordingly, Texas Eastern must offer interruptible TEMAX or TIME III transportation services at those times when all of the reserved firm capacity is not being used. Texas Eastern states in its July 17, 2009 response to the Commission's data request that it has not proposed to track interruptible service separately on existing facilities or the expansion facilities.<sup>45</sup> Therefore, Texas

---

<sup>43</sup> See *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205, at 61,724 (2002).

<sup>44</sup> 18 C.F.R. § 284.9(a) (2009).

<sup>45</sup> See Texas Eastern's July 17, 2009 response to Question 6 of staff's July 7, 2009 data request.

Eastern proposes to charge its system interruptible transportation rates for all interruptible throughput on the TEMAX and TIME III facilities consistent with the rate design approved by the Commission for Texas Eastern's TIME and TIME II Projects.<sup>46</sup> The Commission will permit Texas Eastern to charge its system interruptible transportation rate for throughput on the TEMAX and TIME III facilities as proposed, subject to its Rate Schedule IT-1 crediting mechanism.<sup>47</sup>

### **Allowance for Funds Used During Construction (AFUDC) Accrual Period**

54. Texas Eastern filed its application for a certificate of public convenience and necessity to construct and operate the facilities on February 27, 2009. Texas Eastern proposes to start the accrual of AFUDC beginning December 2008, or approximately three months prior to filing its certificate application, and continuing through November 2010.<sup>48</sup> The amount of AFUDC accrued prior to filing the certificate application is approximately \$364,000.<sup>49</sup>

55. Under the Commission's accounting regulations, a company may begin accruing AFUDC on construction costs when the costs are continuously incurred on a planned progressive basis, but for a company constructing a natural gas pipeline, AFUDC should not be accrued for the period of time prior to the date of the application to the Commission for a certificate to construct facilities unless specifically justified. This ruling is in accordance with the requirements of Accounting Release No. 5 (Revised) (AR-5),<sup>50</sup> Capitalization of Interest During Construction, which states, in part,

Interest during construction may be capitalized starting from the date that construction costs are continuously incurred on a planned progressive basis.

---

<sup>46</sup> See *Texas Eastern Transmission, LP*, 119 FERC ¶ 61,258 (2007); *Texas Eastern Transmission, LP*, 99 FERC ¶ 61,383 (2002), *order denying reh'g and granting clarification*, 101 FERC ¶ 61,046 (2002).

<sup>47</sup> *Texas Eastern Transmission, LP*, FERC Gas Tariff, Seventh Revised Volume No. 1, First Revised Sheet No. 618 and Third Revised Sheet No. 619.

<sup>48</sup> See Texas Eastern's July 17, 2009, response to staff's July 7, 2009 data request, question no. 7.

<sup>49</sup> *Id.*

<sup>50</sup> *Accounting Release No. 5 (Revised), Capitalization of Interest During Construction*, Effective January 1, 1968, FERC Stats. & Regs. ¶ 40,005.

Interest should not be accrued for the period of time prior to: . . . the date of the application to the Commission for a certificate to construct facilities by a natural gas company. Interest accruals may be allowed by the Commission for the period prior to the above dates if so justified by the company . . .

56. Texas Eastern has not provided any support to justify the accrual of AFUDC prior to filing its certificate application. Accordingly, the Commission rejects Texas Eastern's proposed accrual of AFUDC prior to the date of filing for a certificate to construct the facility. Texas Eastern is directed to reverse the AFUDC accrued between December 2008 and February 27, 2009, the date of the certificate application filing. Additionally, Texas Eastern is directed to adjust all cost of service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, return, and Interest Expense to appropriately reflect the effects from the reversal of the AFUDC accrued prior to the date of the certificate application filing. As discussed above, Texas Eastern is required to file its revised rates and work papers with sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.<sup>51</sup> We have decided this issue based on the record in this proceeding. However, the question of whether the Commission should generally permit the accrual of AFUDC prior to the filing date of a certificate application has been raised in several recent proceedings. Therefore, it is the Commission's intent to begin examining the issue in the near future, through a public process.

### **Environmental Analysis**

57. On November 18, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed TEMAX and TIME III Projects and Request for Comments on Environmental Issues* (NOI). On March 13, 2009, we also issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Proposed TEMAX and TIME III Projects and Alternative and Request for Comments on Environmental Issues* (Supplemental NOI).

58. We received comments in response to the NOI and Supplemental NOI from residents in the vicinity of the projects, coal companies, York and Lancaster County planning offices, U.S. Department of Health and Human Services, Hellam Township, and Pennsylvania Department of Conservation and Natural Resources (PADCNR). The comments expressed concerns regarding the crossing of coal reserves, the Continuous Canopy Woodland Corridor Reservation of Hellam Township, construction near a unique geologic feature in Hellam Township called Chimney Rock, cultural resources, tree

---

<sup>51</sup> See *Southern Natural Gas Co.*, 128 FERC ¶ 61,198, at P 40-45 (2009), *reh'g pending*; and *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 86-92 (2009), *reh'g pending*.

clearing, right-of-way restoration, noise, safety, health, alternatives, a planned recreational trail, impacts on the Susquehanna River, and special status species. In addition, several interveners raised the issue of gas odorization as the gas that would be transported on the Marietta Extension is currently odorized.

59. Scoping comments were also provided by Emerald Coal Resources, L.P. (Emerald) and CONSOL Energy Inc. (CONSOL). Emerald requested that the Commission decline to grant Texas Eastern a Certificate until it appropriately addresses known risks to its proposed pipeline segments located in an active mining corridor in southwestern Pennsylvania. Emerald also recommended conditioning any Certificate the Commission may issue to require Texas Eastern to appropriately consider and address known subsidence risks, including consideration of locating pipeline segments out of the mining corridor. If the pipelines are not relocated, Emerald recommended requiring Texas Eastern to develop and file an appropriate subsidence mitigation plan to be made available for review and comment prior to the commencement of construction. Emerald also requested the Commission consider the cumulative impacts associated with other pipeline projects, and that FERC should prepare an Environmental Impact Statement for the TEMAX and TIME III Projects.

60. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (EA) for the TEMAX and TIME III Projects. The EA was issued on September 11, 2009 for a 30-day public comment period and placed into the public record of this proceeding. The EA was noticed in the *Federal Register* on September 18, 2009,<sup>52</sup> and mailed to federal, state, and local agencies; elected officials; local newspapers and libraries; Native American groups; interveners to this proceeding; and other interested parties. The analysis in the EA addressed 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. The EA also addressed all substantive issues raised in the scoping comments. The EA comment period ended on October 13, 2009.

61. We received comments on the EA from Emerald/Freeport; PADCNR, Bureau of State Parks; Pennsylvania Department of Environmental Protection (PADEP); Matthew Baum (an individual landowner adjacent to the proposed Marietta Extension); the Appalachian Trail Conservancy; York County Planning Commission; and the Pennsylvania Natural Diversity Inventory. Texas Eastern responded to several comments with additional information and stated that it is able to obtain the electricity to support the proposed compression at the Heidlersburg Compressor Station. Texas Eastern also

---

<sup>52</sup>74 Fed. Reg. 47937.

confirmed that it would not need to construct the Chambersburg Alternative analyzed in the EA, as an alternative to the proposed Heidlersburg Compressor Station upgrade.

62. The Appalachian Trail Conservancy comments expressed concern regarding consultation on the Chambersburg Alternative's crossing of the Appalachian National Scenic Trail and on the eligibility of the trail for listing on the National Register of Historic Places. The Pennsylvania Natural Diversity Inventory stated that Prairie Sedge, a sensitive plant species, was not identifiable due to the time of year of Texas Eastern's survey of the Chambersburg Alternative. The Bureau of State Parks commented that additional information was needed regarding the construction impacts and restoration measures for Caledonia State Park that would be crossed if the Chambersburg Alternative was constructed.

63. In its comments on the EA, Texas Eastern stated that it has decided to not construct the Chambersburg Alternative because sufficient electricity is available for the additional compression at the Heidlersberg Compressor Station. Therefore, no impacts on the Appalachian Scenic Trail, Prairie Sedge, or Caledonia State Park will occur. No further discussion on these comments is needed.

64. The PADEP stated that a determination should be made whether a storage tank located at the Lower Chanceford Meter Station is regulated under the Storage Tank Act. Texas Eastern filed additional information to address this comment and stated that this tank would be regulated under the Natural Gas Pipeline Safety Act of 1968; therefore, the Pennsylvania Storage Tank Act would not apply to this tank.

65. The York County Planning Commission's comments stated that efforts should be made to avoid, minimize, or mitigate disturbance to Devil's Hole Rock Shelter, a unique geologic natural feature, in Windsor Township. Texas Eastern filed additional information showing that the location of Devil's Hole Rock Shelter is more than 300 feet from construction of the Marietta Extension. Further, Texas Eastern committed to apply the same mitigation measures planned for Chimney Rock which is discussed in the EA. While this feature was not identified in the EA, we believe it is unlikely that any adverse impact would occur on this site because of the distance to construction and the mitigation that would be implemented.

66. The planning commission also commented that there are 61 known sinkholes in York County, not two as stated in the EA. As presented in the EA, the lateral only crosses a small portion of York County where carbonate bedrock is at the surface in the vicinity of the U.S. Route 30 crossing. No impacts associated with sinkholes are anticipated. The EA focused on the two known sinkholes in the vicinity of the pipeline, in the area of the U.S. Route 30 crossing east of the City of York. Texas Eastern reviewed the PADCNR Map 68 and stated the map is consistent with the information provided in its resource reports for the project and that the two closest sinkholes (discussed in the EA) are over 0.25 mile from the lateral.

67. Matthew Baum commented that Chimney Rock is eligible for listing on the National Register for Historic Places and is a Traditional Cultural Property of the people of the Lower Susquehanna, including, but not limited to Native Americans and federally recognized tribes. Texas Eastern contacted 15 Native American tribes<sup>53</sup> resident in or with traditional ties to the areas to be impacted by the proposed project in May 2008. The Seneca Nation of Indians, Shawnee Tribe of Oklahoma, and Delaware Tribe of Indians responded with a request for the results of the archeological survey. Additionally, these tribes received the NOI, the Supplemental NOI, and our EA. They have also received copies of the survey report. No tribes have expressed concerns about Chimney Rock. Additionally, an archaeological survey was conducted along the pipeline corridor in the vicinity of Chimney Rock, and no archaeological sites were identified. Chimney Rock is over 300 feet from the construction area and would not be directly impacted by the project. The viewshed from Chimney Rock includes an existing aboveground power line which the Marietta Lateral would parallel for most of its length. Because the pipeline would be located on the opposite side of the power line in the vicinity of Chimney Rock, it is unlikely that the project would have an adverse effect on Chimney Rock.

68. Mr. Baum also requested that additional time be allotted for Native Americans to comment. The EA, which contained a discussion of potential impacts on Chimney Rock, was provided to the 15 Native American tribes resident in or with ties to the project area. No comments from these tribes have been received to date, and we believe sufficient time has been allotted for all interested parties to comment on the EA.

69. Mr. Baum also stated that he was not given adequate notice about Texas Eastern's Project. Mr. Baum's property will not be disturbed by construction and is not located close enough to project activities to require notification under our regulations. However, Mr. Baum received our EA and provided comments. Texas Eastern has been in contact with Mr. Baum to try and address his concerns. Additionally, Texas Eastern rerouted the pipeline further away from Chimney Rock based on scoping comments received on the NOI.

70. Mr. Baum is concerned about potential adverse impacts on Chimney Rock, a geoheritage site, if blasting is done to excavate the trench during pipeline construction. The EA states that Texas Eastern would monitor Chimney Rock by placing seismographs close to it during blasting.<sup>54</sup> All blasting must be done in accordance with the PADEP blasting regulations, and the person conducting the blasting must have a blasting license. All blasting operations in Pennsylvania also require a blasting permit from the PADEP.

---

<sup>53</sup> These tribes are listed on page 76 of the EA.

<sup>54</sup> EA page 33.

The Pennsylvania blasting regulations<sup>55</sup> were designed to provide protection to people and property beyond the blast site and to personnel at the blast site. The conservative regulatory limits of ground vibrations were set to prevent cosmetic damage to plaster walls. Major cracking of interior walls, foundations damage, or other structural damage would not occur unless ground vibration levels exceed the legal limits by a considerable amount. Because of the distance separating Chimney Rock from potential blasting activities associated with construction of the Marietta Lateral and the Pennsylvania blasting requirements, we do not believe that blasting will adversely impact Chimney Rock. Also, as stated in the EA, the Pennsylvania Department of Natural Resources Bureau of Topography and Geological Survey stated in a letter dated April 13, 2009, that it believes that construction of the pipeline would not degrade the geoheritage values of the site. Although adverse impacts are not expected to result from project-related blasting, Texas Eastern stated it would either repair blast-related damages or fairly compensate the owner for damages.

71. In its comment on the EA, Emerald/Freeport stated that the EA fails to adequately address mining-related safety issues, as was done for the Rockies Express REX-East Project (Docket No. CP07-208-000) and the Dominion Hub III proceedings. In both REX-East and Hub III, new pipeline facilities were authorized for areas to be mined in the near future and a time frame for mining in the pipeline location was provided by either the pipeline or mining company. Texas Eastern and Emerald/Freeport provided a time frame in this proceeding in which the Emerald Mine has plans for expansion beneath the existing Texas Eastern pipeline. Texas Eastern designed its new pipeline facilities to avoid this area; therefore, subsidence impacts caused by planned longwall mining in the vicinity of the new facilities to be constructed in this proceeding will be avoided. The Council of Environmental Quality's implementing regulations for NEPA requires that reasonably-foreseeable future actions be evaluated.<sup>56</sup> Emerald/Freeport has not provided a reasonably-foreseeable timeframe in which it plans to mine coal reserves under other areas of Texas Eastern's facilities. Future mine subsidence not currently planned or permitted that could impact Texas Eastern's existing facilities and these new facilities would be more properly addressed through the Pennsylvania DEP's administrative process for pending mining permit applications.

72. Emerald/Freeport stated in its comments that the EA alternatives analysis is deficient because the EA does not address an alternative to a "gap" between Texas

---

<sup>55</sup> Additional information regarding Pennsylvania's regulatory program for blasting can be obtained from the PADEP's Fact Sheet entitled *Citizen's Guide to Explosives Regulations in Pennsylvania*, which can be found at [www.elibrary.dep.state.pa.us/dsweb/ImageStoreViewer/Document-72590](http://www.elibrary.dep.state.pa.us/dsweb/ImageStoreViewer/Document-72590).

<sup>56</sup> Section 1508.7.

Eastern's new facilities that avoids Emerald's proposed mining area. Texas Eastern's design that avoids Emerald's proposed mining area avoids subsidence impacts to the proposed facilities; therefore, there is no need to consider an alternative to the "gap".

73. Emerald/Freeport also stated that the cumulative analysis is deficient, but does not specify the deficiency other than stating a broader time span and a wider area should be considered. Without knowing the specific issue that Emerald/Freeport believes should be further evaluated in cumulative impacts we are limited in our ability to discuss the issue further. The scoping process is used to identify those issues which need to be evaluated on a wider scale. Emerald/Freeport did request that a regional study of pipeline projects impacts on coal mining be evaluated, and we did include a discussion of several recent past, current, and publically announced projects in the alternatives discussion in the EA.

74. Emerald/Freeport also stated that the EA does not address the connected action of Texas Eastern's Northern Bridge Project.<sup>57</sup> We authorized the Northern Bridge Project in December 2008. It is a stand-alone project designed to provide a contracted volume of gas to a certain customer within a certain timeframe. The instant project is designed to provide another contracted volume of gas within a different timeframe. The Commission does not allow the unnecessary overbuilding of capacity so that customers are not paying for facilities that are not being used and to minimize impacts on landowners and communities for facilities that are not needed. The Northern Bridge Project is currently in operation and is not dependent on the facilities to be constructed as part of the TEMAX and TIME III Projects. The Northern Bridge Project was included in the cumulative impacts discussion in the EA.

75. Emerald/Freeport filed additional comments requesting the Commission to allow it to supplement previous comments on the EA based on National Fuel Supply Corporation's (National Fuel) recent request to enter pre-filing for a proposal to upgrade and relocate its existing Line N.<sup>58</sup> As stated in its pre-filing request letter, National Fuel's planned project would address safety concerns and avoid future interruptions to service that have recently occurred on other segments of its Line N due to subsidence from longwall mining. National Fuel's project is an operational decision made by National Fuel to avoid potential future service disruptions. The Commission would consider any proposal by Texas Eastern to relocate or replace its existing pipeline system if and when Texas Eastern makes such a request. As stated in the EA,<sup>59</sup> longwall mining and

---

<sup>57</sup> *Texas Eastern Transmission*, 125 FERC ¶ 61,342 (2008), *reh'g denied*, 127 FERC ¶ 61,162 (2009).

<sup>58</sup> National Fuel, Docket No. PF10-1-000, October 13, 2009.

<sup>59</sup> EA page 29.

subsidence issues with respect to Texas Eastern's existing pipeline facilities can more properly be resolved through the Pennsylvania DEP's administrative process for pending mining permit applications or, if necessary, by a court of competent jurisdiction.

76. Based on the discussion in the EA, we conclude that if constructed/replaced and operated in accordance with Texas Eastern's application and supplements, and our recommended mitigation conditions provided in Appendix B, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

77. 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 and replacement of facilities approved by this Commission.<sup>60</sup>

78. At a hearing held on November 19, 2009, 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) A certificate of public convenience and necessity is issued to Texas Eastern to construct and operate the TEMAX and TIME III facilities, including the Marietta Extension, as described more fully in the order and application.

(B) Texas Eastern is granted permission and approval under section 7(b) of the NGA to abandon pipeline and compression facilities described herein and in Texas Eastern's application.

(C) The certificate authority granted in Ordering Paragraph (A) shall be conditioned on the following:

- (1) Texas Eastern's completion of the authorized construction of the proposed facilities and making them available for service within 14

---

<sup>60</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 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).

months of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.

- (2) Texas Eastern's compliance with all applicable Commission regulations under the NGA including but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.
- (3) Texas Eastern's compliance with the environmental conditions in Appendix B to this order.
- (4) Texas Eastern must notify the Commission within 10 days of the abandonment of facilities authorized by Ordering Paragraph (B).

(D) Texas Eastern shall execute firm service agreements reflecting levels and terms of service equivalent to those represented in its precedent agreements prior to commencing construction of the expansion project.

(E) Texas Eastern shall notify the Commission's environmental staff by telephone, e-mail, 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 within 24 hours.

(F) Texas Eastern's request for authorization to charge incremental recourse rates, fuel use and electric power costs is approved. In the event Texas Eastern proposes to roll in these project costs at a future date, it will have the burden of demonstrating that such a roll in will not result in Texas Eastern's existing customers subsidizing these expansion projects.

(G) Texas Eastern must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations not less than thirty days nor more than sixty days prior to commencing service.

(H) Texas Eastern shall file its negotiated rate agreements or numbered tariff sheets, not less than 30 days and not more than 60 days, prior to the commencement of service on the project for each shipper paying a negotiated rate with the following information:

- (1) the exact legal name of the shipper;
- (2) the total charges (the negotiated rate and all applicable charges);

- (3) the receipt and delivery points;
- (4) the volumes of gas to be transported;
- (5) the applicable rate schedule for the service; and
- (6) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of the service agreement in the tariff.

Texas Eastern is also directed to disclose all consideration linked to the agreements, and to maintain separate and identifiable accounts for volumes transported, billing determinates, 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 NGA section 4 or 5 rate case.

(I) Late interventions are accepted as discussed in the body of this order.

(J) Protests, requests for technical conference, and motions to lodge are denied as discussed in the body of this order.

By the Commission. Commissioner Spitzer concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

Interventions

Timely Interventions:

Atmos Energy Corporation  
Carolina Power & Light Company dba Progress Energy Carolinas, Inc.  
Conectiv Energy Supply, Inc.  
ConocoPhillips Company  
Consolidated Edison Company of New York, Inc. and  
Philadelphia Gas Works (ConEd and PGW)  
Delmarva Power & Light Company  
East Ohio Gas Co. dba Dominion East Ohio and  
Peoples Natural Gas Company, The dba Dominion Peoples  
Emerald Coal Resources, L.P., Freeport Resources Corp., and Freeport Mining, LLC  
(collectively, Emerald/Freeport)  
Exelon Corporation, on behalf of PECO Energy Company (PECO)  
National Grid Gas Delivery Companies  
New England and Local Distribution Companies, The<sup>61</sup>  
New Jersey Natural Gas Company  
NJR Energy Services Company  
Piedmont Natural Gas Company, Inc.  
PSEG Energy Resources & Trade LLC  
ProLiance Energy, LLC  
Transcontinental Gas Pipe Line Company, LLC (Transco)  
UGI Distribution Companies (comprised of UGI Utilities, Inc. and  
UGI Central Penn Gas, Inc.)  
William Wayne Smith

Interventions Out of Time:

Eastern Shore Natural Gas Company  
Municipal Defense Group, The

---

<sup>61</sup> Includes: Bay State Gas Company; Connecticut Natural Gas Corporation; Northern Utilities, Inc.; NSTAR Gas Company; The Southern Connecticut Gas Company; and Yankee Gas Services Company.

## Appendix B

### Environmental Conditions

1. 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 Commission Order. Texas Eastern must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
  
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the TEMAX and TIME III Projects. 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 construction and operation of the Projects.
  
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 or 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 or sheets.

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

5. Texas Eastern shall file with the Secretary detailed alignment maps or 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 will 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, or 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 Texas Eastern's Erosion and Sediment Control Plan 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. **Within 60 days of the acceptance of the Certificate and prior to construction,** Texas Eastern shall file an Implementation Plan with the Secretary for the 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 and mitigation measures described in its application (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 per spread, 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 refresher training as the Projects progress 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. 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 current construction status of each spread, work planned for the following reporting period, and 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 or permit requirements imposed by other federal, state, or local agencies);

- d. a description of 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 or 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.
8. Texas Eastern shall develop and implement an environmental complaint resolution procedure for at least 2 years following the completion of construction. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems or concerns during construction of the Projects and restoration of the rights-of-way. **Prior to construction**, Texas Eastern shall mail the complaint procedures to each landowner whose property would be crossed by the Projects.
- a. In its letter to affected landowners, Texas Eastern shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that, if they are not satisfied with the response, they should call Texas Eastern's Hotline; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that, if they are still not satisfied with the response from Texas Eastern's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  - b. In addition, Texas Eastern shall include in its weekly status report a copy of a table that contains the following information for each problem or concern:
    - (1) the identity of the caller and the date of the call;
    - (2) the identification number from the certificated alignment sheets of the affected property and the location by milepost;
    - (3) a description of the problem or concern; and
    - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. Texas Eastern must receive written authorization from the Director of OEP **before commencing service** from the Projects. Such authorization will only be granted

following a determination that rehabilitation and restoration of the rights-of-way and other areas affected by the Projects are proceeding satisfactorily.

10. **Within 30 days of placing the certificated 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 Certificate conditions Texas Eastern has complied with or will comply with. This statement shall also identify any areas affected by the Projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
  
11. Texas Eastern shall **not begin construction** of the TEMAX and TIME III Project facilities **until**:
  - a. the FERC staff completes any necessary consultation with the U.S. Fish and Wildlife Service; and
  - b. Texas Eastern has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
  
12. Texas Eastern shall **not begin construction** and use of facilities and staging, storage, temporary work areas and new or to-be-improved access roads **until**:
  - a. Texas Eastern files the Pennsylvania State Historic Preservation Officer's (SHPO) comments on the Phase I survey reports;
  - b. Texas Eastern files evaluations for the nine buildings within the Projects' Area of Potential Effect and Uniontown, Bedford, and Chambersburg Compressor Stations; the SHPO's comments on the evaluations; and, any required avoidance or mitigation plans;
  - c. Texas Eastern files supplemental survey reports for any realignments or reroutes, extra work spaces, access roads, contractor yards, or other areas requiring survey, and the SHPO's comments on the reports;
  - d. the Advisory Council on Historic Preservation is afforded an opportunity to comment, if historic properties would be adversely affected; and
  - e. the Director of OEP notifies Texas Eastern in writing that treatment plans 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.”**

13. Texas Eastern shall conduct noise surveys at the Holbrook and Chambersburg Compressor Stations **no later than 60 days** after placing the new equipment in service to verify that the noise from all of the equipment at the modified stations at full capacity:
  - a. does not exceed an day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at noise sensitive area (NSA) #2 at the Holbrook Compressor Station; and
  - b. does not exceed the previously-existing noise levels at NSA #1 at the Holbrook Compressor Station and NSA #1 and #2 at the Chambersburg Compressor Station.

If the noise attributable to the operation of all of the equipment at the Holbrook and Chambersburg Compressor Stations exceed these levels, Texas Eastern should, **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise levels at the NSAs to or below the previously existing noise levels. Texas Eastern should confirm compliance with this requirement by filing the results of a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

14. Texas Eastern shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized equipment at the Uniontown and Heidlersburg Compressor Stations in service. If the noise attributable to the operation of all of the equipment at Uniontown and Heidlersburg Compressor Stations at full load exceeds an  $L_{dn}$  of 55 dBA at the nearby NSAs, Texas Eastern shall file a report on what changes are needed and should install additional noise controls to meet the level **within 1 year** of the in-service date. Texas Eastern should 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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

Docket No. CP09-68-000

(Issued November 19, 2009)

SPITZER, Commissioner, concurring:

I support the Order as a reasonable outcome. However, I write separately to emphasize the importance of the public process that we have announced to undertake a review of whether the Commission should generally permit the accrual of AFUDC prior to the filing of a certificate application.

I am agreement with the announcement that we will initiate a public forum to discuss “whether the Commission should generally permit the accrual of AFUDC prior to the filing date of a certificate application.”<sup>1</sup> This issue has arisen in a number of proceedings over the last year, and I therefore look forward to a public forum in the near future through which a fulsome record on the issue can be developed and analyzed.

Accordingly, I respectfully concur.

---

Marc Spitzer  
Commissioner

---

<sup>1</sup> Order at P 56.