

144 FERC ¶ 61,042  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC                      Docket No. CP12-497-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued July 18, 2013)

1. On August 8, 2012, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application, under section 7 of the Natural Gas Act (NGA)<sup>1</sup> and Part 157, Subpart A of the Commission's regulations,<sup>2</sup> for a certificate of public convenience and necessity authorizing the construction and operation of a new 2,167-foot-long, 42-inch-diameter replacement pipeline on Transco's mainline system (Mainline A) in East Brandywine and East Caln Townships, Chester County, Pennsylvania (Brandywine Replacement Project or project). Transco states that the proposed replacement is necessary in order to bring its facilities into compliance with federal pipeline safety regulations. The proposed replacement will not add firm transportation capacity on Transco's system. Transco also requests authority to abandon pressure control facilities at its Downingtown Meter Station and Compressor Station 200 in Chester County, Pennsylvania. We grant the requested authorizations, subject to conditions discussed below.

**I. Background and Proposal**

2. Transco,<sup>3</sup> a Delaware limited liability company, is a natural gas company<sup>4</sup> that transports natural gas in interstate commerce through its natural gas transmission system extending from Texas, Louisiana, and the offshore Gulf of Mexico area, through

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<sup>1</sup> 15 U.S.C. §§ 717f(b) and 717f(c) (2006).

<sup>2</sup> 18 C.F.R. Part 157, Subpart A (2013).

<sup>3</sup> Transco is a wholly-owned subsidiary of Williams Gas Pipeline Company, LLC, which is a wholly-owned subsidiary of the Williams Companies, Inc.

<sup>4</sup> See 15 U.S.C. § 717a(6) (2006).

Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its terminus in the metropolitan New York City area.

3. On August 14, 2008, the Commission issued a certificate of public convenience and necessity for the Sentinel Expansion Project, authorizing Transco, among other things, to replace 7.15 miles of 30-inch-diameter pipeline with 42-inch-diameter pipeline on its Mainline A pipeline between Downingtown Meter Station at milepost (MP) 1715.09 and Compressor Station 200 at MP 1722.24 in Chester County, Pennsylvania.<sup>5</sup> However, Transco was unable to obtain the necessary National Pollutant Discharge Elimination System (NPDES) permit and Water Obstruction and Encroachment permit from the Pennsylvania Department of Environmental Protection (PADEP) that would have allowed open cutting across the East Branch of Brandywine Creek. Therefore, Transco modified its construction plan and installed reducers<sup>6</sup> to connect the existing 2,167 feet segment of 30-inch-diameter pipeline crossing the East Branch of Brandywine Creek to the new 42-inch-diameter pipeline segments on either side of the creek. Transco completed construction and placed the facilities into service on November 1, 2009.

4. Because Transco installed reducers and left a segment of the original 30-inch-diameter pipeline in place, an internal inspection device is unable to pass along the entire length of Mainline A. As a result, that line has not been in compliance with federal pipeline safety regulations.<sup>7</sup> Consequently, Transco requested a special permit from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) waiving the internal inspection requirement for the 2,167-foot section of Transco's Mainline A. PHMSA granted temporary waiver on June 10, 2011. However, the waiver expires on June 10, 2014. Prior to expiration, Transco is required to modify the currently installed facilities to allow passage of an internal inspection device.

5. To bring its facilities into compliance with PHMSA regulations, Transco proposes to now replace the 2,167-foot section of existing 30-inch-diameter pipeline with 42-inch-

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<sup>5</sup> See *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160 (2008). On December 31, 2008, Transco converted from a corporation to a limited liability corporation and, as a result, Transcontinental Gas Pipe Line Corporation changed its name to Transcontinental Gas Pipe Line Company, LLC.

<sup>6</sup> A reducer is a fitting that allows a larger pipeline to be connected to a smaller pipeline.

<sup>7</sup> See 49 C.F.R. § 192.150 (2013) (requiring new transmission line and each replacement of line pipe, valves, fittings, or other pipeline components in a transmission line be designed and constructed to accommodate the passage of instrumented internal inspection devices).

diameter pipeline, thus enabling internal inspection devices to collect pipeline integrity data for the entire 7.15-mile segment of Mainline A.

6. In addition, Transco proposes to abandon pressure control facilities at the Downingtown Meter Station and Compressor Station 200. Transco states this modification to the facilities would increase the maximum allowable operating pressure (MAOP) on Mainline A from 650 pounds per square inch gage (psig) to 800 psig.

7. Transco estimates that the Brandywine Replacement Project will cost approximately \$17.4 million.<sup>8</sup> Transco states that it will pay for the project through short-term loans and cash reserves.

## **II. Notice, Interventions, Comments, and Protest**

8. Notice of Transco's application was published in the *Federal Register* on August 27, 2012 (77 Fed. Reg. 51,793). The twenty-one entities listed in Appendix A of this order have filed timely, unopposed motions to intervene.<sup>9</sup>

9. James A. Schmid, Valley Forge Chapter of Trout Unlimited, and Victory Brewing Company (Victory) filed late motions to intervene. We find that these movants have demonstrated an interest in this proceeding and find that granting these untimely motions to intervene will not disrupt this proceeding and will not prejudice or add additional burdens on any parties to this proceeding. Thus, we will grant the untimely motions to intervene.<sup>10</sup>

10. In addition, Victory filed a protest. Victory and many commenters expressed concerns about the environmental impacts of Transco's proposed open-cut method to replace the pipeline across the Brandywine Creek. The Delaware Riverkeeper Network (Delaware Riverkeeper) filed comments stating that Transco is improperly segmenting its expansion projects. These comments are addressed below.

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<sup>8</sup> See Application at Exhibit K. Transco states it will finance the project as part of its overall, long-term financing program.

<sup>9</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. See 18 C.F.R. § 385.214(c) (2013).

<sup>10</sup> See *id.* § 385.214(d).

### **III. Discussion**

11. Since Transco seeks to abandon, construct, and operate facilities used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.<sup>11</sup>

#### **A. Proposed Abandonment of Pressure Control Facilities**

12. Section 7(b) of the NGA allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the “present or future public convenience or necessity.”<sup>12</sup> Upon implementation of the proposed replacement of the 2,167-foot segment of 30-inch-diameter pipeline with 42-inch-diameter pipeline, as discussed below, Transco’s pressure control systems, which reduce the MAOP to accommodate the smaller diameter pipeline, will no longer be necessary. Accordingly, the Commission finds that the public convenience or necessity permit Transco’s proposed abandonment.

#### **B. Certificate Policy Statement**

13. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>13</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, the Commission balances the public benefits against the potential adverse consequences. The Commission’s goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant’s responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new storage and pipeline construction.

14. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the

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<sup>11</sup> 15 U.S.C. §§ 717f(b), 717f(c), and 717f(e) (2006).

<sup>12</sup> *Id.* § 717f(b).

<sup>13</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

15. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As stated above, Transco's decision to accommodate permitting issues related to its Sentinel Expansion Project by incorporating an existing segment of 30-inch-diameter pipeline into a new 42-inch-diameter loop resulted in a facility that cannot accommodate an internal inspection device for its entire length. We find that Transco's proposal to now replace that segment of pipeline is a reasonable means of bringing its Mainline A into compliance with PHMSA regulations. The proposal will allow Transco to continue to meet its firm contractual obligations while enhancing the reliability and safety of Transco's Mainline A system, which will benefit existing Transco customers. The Certificate Policy Statement specifically provides that it is not a subsidy for existing customers to pay for projects designed to maintain and improve existing service.<sup>14</sup> Thus, we find that the threshold no-subsidy requirement has been met.

16. The project will not adversely affect Transco's existing customers because the project is designed to maintain existing services to Transco's existing customers and will make their service more reliable. Further, we find there will be no adverse impact on other pipelines or their customers, as no new service is proposed.

17. We find Transco has taken steps to minimize the adverse impacts to landowners and communities that might be affected by its project. Transco will construct the proposed facilities adjacent to existing pipeline rights-of-way or within existing facility property boundaries. Transco already has some of the necessary property rights for the proposed project and will continue to negotiate with landowners for the remaining easements in order to reduce the reliance on eminent domain.

18. Based on the benefits the project will provide, the lack of adverse impacts on Transco's existing customers, other pipelines and their captive customers, and the minimal adverse effects on landowners or communities, we find that Transco's proposed project is consistent with the Certificate Policy Statement and required by the public convenience and necessity, as conditioned in this order.

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<sup>14</sup> See Certificate Policy Statement, 90 FERC ¶ 61,128, at 61,393-94.

### C. Rates

19. Transco proposes to pay for the \$17.4 million cost of the project initially through short-term loans and cash reserves. Transco states that it will determine the long-term financing of this project and Transco's overall financial strategy at a later time.

20. The facilities we are authorizing here were, in essence, initially proposed, and authorized, as part of Transco's earlier Sentinel Expansion Project. Because Transco's instant proposal is intended to bring the facilities that Transco ultimately constructed as part of its Sentinel Expansion Project into compliance with PHMSA regulations, we find it is appropriate for the Commission to grant a presumption favoring rolling the costs of the Brandywine Creek Replacement Project into the incremental rates for service on the Sentinel Expansion Project in Transco's next NGA section 4<sup>15</sup> rate proceeding, absent any significant change in circumstances.

### D. Segmentation of Expansion Projects

21. In its motion to intervene, Delaware Riverkeeper expressed a concern that Transco may be improperly segmenting its expansion projects to avoid "more rigorous environmental studies."<sup>16</sup> Though it did not identify other expansion projects, Delaware Riverkeeper speculated that the Brandywine Replacement Project "may merely be the first of several related projects."<sup>17</sup>

22. Delaware Riverkeeper's characterization of the Brandywine Creek Replacement Project is not correct. The proposed project is not an expansion project. It merely replaces one section of existing pipeline without adding any additional capacity.

23. Moreover, there is no evidence that Transco is improperly segmenting its projects. Under the National Environmental Policy Act (NEPA),<sup>18</sup> improper segmentation occurs if the segmented project has no independent utility, no life of its own, or is simply illogical when viewed in isolation.<sup>19</sup> The White House Council on Environmental Quality's (CEQ) NEPA regulations provide guidance on when actions should be

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<sup>15</sup> 15 U.S.C. § 717c (2006).

<sup>16</sup> Delaware Riverkeeper's Motion to Intervene at 3 (filed Aug. 22, 2012).

<sup>17</sup> *Id.*

<sup>18</sup> 42 U.S.C. §§ 4321-4347 (2006).

<sup>19</sup> *See Stewart Park and Reserve Coalition, Inc. v. Slater*, 352 F.3d 545, 559 (2d Cir. 2003).

analyzed together or separately. Specifically, CEQ's regulations provide that proposals should be analyzed in the same environmental impact statement (EIS) if they are "connected" (i.e., "closely related").<sup>20</sup> Actions are connected if they automatically trigger other actions that may require an EIS, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent of a larger action and depend on the larger action for their justification.<sup>21</sup>

24. Here, it is clear that Transco's Brandywine Creek Replacement Project has independent utility because it is intended to bring Transco's facilities into compliance with the federal pipeline safety regulations set forth in 49 C.F.R. § 192.150, which require that a transmission line be designed and constructed to accommodate the passage of internal inspection devices. Delaware Riverkeeper has failed to identify any allegedly connected actions. Accordingly, we find that Transco's proposed project does not affect, is not affected by, and is not dependent on any proposed action.

25. In the event that Transco files an application for another project in the area, the impacts of the Brandywine Replacement Project will be included in the discussion of cumulative impacts in the environmental review for that project.

#### **E. Environmental Analysis**

26. On September 21, 2012, the Commission issued a "Notice of Intent to Prepare an Environmental Assessment for the Proposed Brandywine Creek Replacement Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting" (NOI). The NOI was published in the *Federal Register*<sup>22</sup> and mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; potentially affected landowners; other interested individuals; newspapers and libraries in the project area; and parties to this proceeding. The Commission received eight comment letters in response to the NOI.

27. On October 9, 2012, Commission staff held a public scoping meeting in West Chester, Pennsylvania to provide the public with information about the project and to receive comments about the project. Eleven people commented on the project at the scoping meeting.

28. In total, twenty-six commenters expressed concern about the project in motions to intervene, letters responding to the NOI, and verbal comments at the scoping meeting.

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<sup>20</sup> 40 C.F.R. § 1508.25(a)(1)(iii) (2013).

<sup>21</sup> *See id.* § 1508.25(a)(1).

<sup>22</sup> 77 Fed. Reg. 59,391 (Sept. 24, 2012).

Delaware Riverkeeper, Guardians of the Brandywine, Berks Gas Truth, League of Women Voters, Pipeline Safety Coalition (PSC), Mayor of Downingtown, East Brandywine Township, Trout Unlimited, Victory, Pennsylvania Sierra Club, Pennsylvania State Senator Andrew Dinniman, and fifteen individuals commented on potential environmental impacts, including potential impacts on water quality in Brandywine Creek and Ludwig's Run, vegetation, land use, and recreation; the need for erosion and sediment control devices; and the consideration of alternatives.

29. To satisfy the requirements of the NEPA, Commission staff prepared an Environmental Assessment (EA) for Transco's proposal. The EA addresses geology and soils, water resources, wetlands, fisheries, vegetation, wildlife, threatened and endangered species, land use, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. All substantive environmental comments received in the motions to intervene, protest, responses to the NOI, and at the scoping meeting were addressed in the EA.

30. Several commenters express concern about potential sedimentation in Brandywine Creek and Ludwig's Run and other effects on water quality, which might potentially result from the proposed pipeline replacement activities. Commenters also express concern about the project's potential effect on the recreational use (i.e., fishing, walking, jogging, bicycle riding, and wildlife viewing) of Brandywine Creek and the Robert B. Struble Trail (Struble Trail).<sup>23</sup>

31. The EA states that Transco would implement numerous impact minimization and mitigation measures as described in its project-specific Soil Erosion and Sediment Control Plans (SESC Plans), Detailed Stream Crossing Plan (DSC Plan), Downingtown Municipal Water Authority (DMWA) Protection Plan, and draft Struble Trail Crossing Plan.<sup>24</sup> For example, Transco will conduct the crossings of Brandywine Creek and Struble Trail using a three-phase approach to minimize the disturbance to the creek and the trail; work 24-hours a day to complete the Brandywine Creek crossing; and monitor the weather and implement, if necessary, high-flow contingency measures. Transco will also install numerous erosion and sediment control devices including silt fences, filter socks, trench plugs, diversion terraces, sediment traps and erosion blankets; coordinate and communicate with the DMWA to address potential water quality issues; and reimburse the DMWA for increased operation or maintenance costs resulting from project-related construction activities. In addition, Transco will post signs along Struble

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<sup>23</sup> Struble Trail is located adjacent to Brandywine Creek.

<sup>24</sup> The EA includes the SESC Plans (Appendix B); DSC Plan (Appendix C); and draft Struble Crossing Plan (Appendix D). The DMWA Protection Plan is available in Transco's December 10, 2012 filing at 4.

Trail to inform users about construction activities and closures and keep the trail open and available for use during construction whenever possible. The EA concludes that with the implementation of the measures contained in the referenced plans, replacement of the pipeline would not significantly affect waterbodies, land use, or recreation.<sup>25</sup>

32. Regarding the need for erosion and sediment control measures, the EA states that Commission staff reviewed Transco's SESC Plans and found them to be acceptable.<sup>26</sup> The EA also states that these plans were developed in consultation with state and local authorities including the Pennsylvania Department of Environmental Protection (PADEP), the Chester County Conservation District (CCCD), and the DMWA.

33. Commenters request that alternative construction methods be considered and compared to Transco's proposed open-cut crossing of Brandywine Creek. The EA addresses the No-Action Alternative, several Brandywine Creek Crossing Alternatives, and an Aboveground Facilities Alternative. The Brandywine Creek Crossing Alternatives considered in the EA include the use of a horizontal directional drill, microtunneling, direct piping, conventional boring, and an alternative crossing that restricts construction activities to Transco's existing rights-of-way. The EA concludes that none of the alternatives considered are preferable to Transco's proposed open-cut of Brandywine Creek.<sup>27</sup>

The EA was issued for a 30-day comment period and placed into the public record on February 28, 2012. The Commission received seven comments on the EA: three affected landowners (David and Anna Jones, Steve Farrell, and Peter F. Alejnikov), two concerned citizens (W. E. Pete Goodman, III and Roberta L. Winters), the Delaware Chapter of the Sierra Club (Sierra Club), and the PSC. The PSC's comments were cosigned by the Valley Forge Chapter of Trout Unlimited, Guardians of the Brandywine, Delaware Riverkeeper, Damascus Citizens for Sustainability, Berks Gas Truth, and Protecting Our Waters.

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<sup>25</sup> See EA at 15 and 21.

<sup>26</sup> See *id.* at 5.

<sup>27</sup> See *id.* at 37 and 38.

## 1. Requests for Additional Information and Clarification

34. Messrs. Jones and Alejnikov request that the Commission staff provide the specific locations of the three wells identified in the EA and the rationale for only identifying wells within 150 feet of the construction right-of-way. The water supply wells identified in the EA are located at MPs 1715.78, 1715.90, and 1715.97. The Commission's regulations in 18 C.F.R. §§ 380.12(d)(5) and 380.12(d)(9) require applicants to identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality and average yield, and known or suspected contamination problems; and identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. If Commission staff determine that the potential impacts on groundwater resulting from proposed construction activities including blasting could affect water supply wells located at a distance greater than 150 feet, it can request additional information or recommend that additional minimization and/or mitigation measures be implemented. However, based on the locations of the potential blasting activities, local topography and geology, and Transco's commitments to minimize and mitigate potential blasting impacts, it was determined that a review of wells located farther than 150 feet from the proposed construction activities was not necessary.

35. Similarly, the PSC took issue with the consideration of impacts on residences within 50 feet of construction workspaces. The Commission's regulations require the applicant to identify residences within 50 feet of construction workspaces.<sup>28</sup> However, if the Commission staff determine that additional consideration and analysis are warranted, staff can request additional information or recommend that additional minimization and/or mitigation measures be implemented. Based on the potential impacts of the project, staff determined that further analysis was not necessary. We note that no evidence of potential impacts outside of the 50-foot radius has been presented.

36. Mr. Farrell contends that lands containing bedrock should be known. Potential blasting has been identified between MPs 1715.62 and 1715.71 and MPs 1715.83 and 1715.91.

37. Mr. Farrell requests copies of the Commission's Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures); Transco's Fugitive Dust Control Plan, Plan for Oil and Hazardous Materials, and Blasting Plan; and a copy of the Hoover and Keith Noise Report. The Commission's Plan and Procedures are available for public review on the FERC website, [www.ferc.gov](http://www.ferc.gov). With the exception of the Blasting Plan, Transco's plans and the Hoover and Keith Noise Report can be viewed by the public using the

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<sup>28</sup> See 18 C.F.R. § 380.12(j)(5) (2013).

Commission's eLibrary.<sup>29</sup> Once filed, Transco's Blasting Plan will also be available for public viewing using the eLibrary. Additionally, to ensure that Transco's plans are publicly available for review, we are requiring, as Environmental Condition 14 of this order, that Transco file with the Secretary, prior to construction, a final copy of the Struble Trail Crossing Plan and the Blasting and Traffic Plans.

38. Mr. Farrell also requests the contact information for the Commission's Dispute Resolution Service and copies of the EA's appendices. The Commission's Dispute Resolution Service can be contacted by phone, toll free at (877) 337-2237 or by email at [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov). Letters may also be sent to the Dispute Resolution Service at 888 First Street NE, Washington, DC 20426. Copies of the EA's appendices are available for viewing using eLibrary.<sup>30</sup>

39. Mr. Farrell requests clarification regarding a culvert identified in the EA.<sup>31</sup> The flow of a small waterbody identified by Transco as S-DO-017 and located immediately east of Struble Trail, approximately at MP 1715.68, would be temporarily directed through a new culvert while Transco constructs the project. Once construction is complete, the culvert will be removed.

40. Mr. Farrell also requests that the Commission identify the location of the proposed temporary access roads. As reported in the EA, Transco proposes to use approximately 770 feet of a gravel driveway located at MP 1750.80, 3,000 feet of the Struble Trail, and 657 feet of the Shady Acres Campground road as temporary access roads.<sup>32</sup>

41. Further, Mr. Farrell requests that the Commission provide a description of what happens to trees after they are cut down. Transco's application provides that trees cleared to construct the project may be chipped for use as erosion-control mulch or disposed of in accordance with applicable local regulations and landowner requirements.<sup>33</sup> Disposal options can also be negotiated during easement negotiations.

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<sup>29</sup> <http://elibrary.ferc.gov/idmws/search/fercadvsearch.asp> (search for Accession Numbers 20120808-5141, 20130107-5219, and 20130123-5080).

<sup>30</sup> <http://elibrary.ferc.gov/idmws/search/fercadvsearch.asp> (search for Accession Number 20130228-4001).

<sup>31</sup> See EA at 13-14.

<sup>32</sup> See *id.* at 4.

<sup>33</sup> See Resource Report 1 of Application at 1-5.

42. Mr. Farrell also requests that the Commission provide the grade and wall thickness of the proposed replacement pipeline and a description of the method to file a landowner/resident complaint. The grade and wall thickness of the new pipeline will be compliant with all PHMSA standards in 49 C.F.R. Part 192 and the standards of Williams Gas Pipeline Company.

43. Environmental Condition 13 of this order requires that Transco develop an environmental complaint resolution procedure to address concerns that landowners or others may have concerning the approved project. This procedure, which will be mailed to all affected landowners will describe the process Transco, will implement to address, document and resolve complaints. The procedure will also establish how complaints and resolutions will be communicated to the Commission and provide information about the Commission's Dispute Resolution Service.<sup>34</sup>

44. Mr. Alejnikov requests that Transco be required to provide copies of the vibration reports prepared by Vibratex to affected parties. Transco will provide the results of pre- and post-construction inspections to landowners upon request.

45. Mr. Alejnikov also questions whether Transco would repair driveway damage. As stated in Transco's application, driveways disturbed by pipeline construction will be restored to their original or better condition, or landowners will be compensated to perform the work via their own contractors.<sup>35</sup>

46. The PSC asks that the identity of the owner of Level 3 Communications be identified.<sup>36</sup> Level 3 Communications, Inc. is a publicly-traded company headquartered in Broomfield, Colorado.

47. The PSC also requests the specific work schedule for the project. Construction schedules received in the application process are tentative and subject to change due to the timing of Commission approval, other agency permits, weather, and other factors. Environmental Conditions 6 and 7 of this order require Transco to file with the Secretary

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<sup>34</sup> See P 39 of this order.

<sup>35</sup> See Resource Report 1 of Application at 1-9.

<sup>36</sup> Level 3 Communications runs a fiber-optic cable along part of Transco's construction right-of-way. To proceed with Transco's replacement project without disturbing service to Level 3 Communications' customers, Transco has agreed to unearth and temporarily suspend Level 3 Communications' existing fiber-optic cable aboveground. When Transco's replacement pipeline is installed, Transco will bury the cable in the pipeline trench during backfilling of the replacement pipeline. See EA at 6.

a detailed project schedule that identifies construction and restoration start dates, and weekly updates of construction-related activities. With the exception of instream construction through Brandywine Creek, it is our expectation that Transco will adhere to East Caln and East Brandywine Township codes concerning construction activities, including the hours when construction can occur. In East Caln Township, construction shall not be performed between the hours of 6:00 p.m. and 7:00 a.m. on weekdays or between the hours of 6:00 p.m. and 9:00 a.m. on weekends. In East Brandywine Township activities are effectively limited by noise levels emitted. In residential, public or open space, noise emissions are limited to 70 dBA between the hours of 7:00 a.m. and 10:00 p.m., and 55 dBA between the hours of 10:00 p.m. and 7:00 a.m.

48. The PSC requests the precise locations of the unnamed tributaries to Brandywine Creek and the waterbodies located within 25 feet of construction workspace. Transco's DSC Plan identifies the specific locations of these waterbodies. These waterbodies are located at MPs 1715.62, 1715.69 (two waterbodies, one crossed by access road AC-DO-2), and 1715.90.

49. The PSC states that the EA does not explain why Transco's Fugitive Dust Control Plan is acceptable. This plan was found to be acceptable because it identified the potential sources of fugitive dust, described the application of commonly implemented best management practices, and cited the responsible parties for implementation.

## **2. State and Local Approvals**

50. The PSC states that additional information should be provided about the various federal, state and local permits applicable to the project so that it can judge the sufficiency of those permits. The EA identifies the permits, approvals, and consultations applicable to Transco's project and identifies the responsible agency and the status of each approval at the time of the EA's issuance.<sup>37</sup> The conclusions in the EA are independent of the other permits and approvals. However, because of the distinct nature of the Water Obstruction and Encroachment Permit issued on November 14, 2012 by the PADEP for the crossing of Brandywine Creek, the requirements of this permit are discussed in the EA. With the exception of the PADEP permit, other state and local permits do not affect the Commission's determinations, and as described previously, must be consistent with the conditions of this order.

51. The PSC states that the PADEP approved a smaller area of disturbance than was described in the EA and that the Commission should enforce the PADEP permit. The PADEP approved Transco's amended Water Obstruction and Encroachment Permit for the Brandywine Creek and Ludwig's Run crossings (Permit No. E15-780) and Transco's

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<sup>37</sup> See EA at 9-10.

National Pollutant Discharge Elimination System Permit (NPDES Permit No. PAI011508064A-1) on November 14, 2012.<sup>38</sup> Because the Water Obstruction and Encroachment Permit is enforced under Pennsylvania state law and NPDES is administered by states under the Clean Water Act, the PADEP will enforce the conditions of these two permits. The EA states that the project would impact 13.54 acres of land, including 4.2 acres of existing and maintained right-of-way. The SESC Plans filed with Transco's application identified 9.11 acres of land as being impacted. The Water Obstruction and Encroachment Permit states approximately 0.93 acre of open water would be temporarily impacted. The NPDES permit does not identify a total amount of land impacted. A possible reason for the difference in the EA's description of the impacted lands and the description in the Water Obstruction and Encroachment Permit is that the permit excluded the contractor yard, three additional access roads, and revised workspaces. The lands not considered in the permits would not impact the resources identified in the permits.

### **3. Determinations of Impact in the EA**

52. The PSC and Messrs. Farrell and Alejnikov contend that statements in the EA regarding potential environmental impacts do not support the EA's recommended finding of no significant impact. However, we note that the statements cited by the commenters generally refer to impacts that the EA states could occur without the implementation of the mitigation proposed by Transco and/or are required by this order. In each case, the EA goes on to say that Transco's proposed or Commission staff's recommended mitigation would reduce the impacts to a less than significant level. Additionally, while the general impacts of the project have been identified and necessary mitigation has been described, additional post-authorization plans will serve to refine the mitigation to address site-specific circumstances prior to construction. The EA clearly states that the finding of no significant impact is based on Transco's implementation of its proposed mitigation and the additional mitigation recommended by the staff.<sup>39</sup> We are including all of Commission staff's recommended mitigation as conditions in this order. The conditions we have imposed will enable the Commission to ensure compliance with all statutory and regulatory requirements and verify that the required mitigation measures are implemented at the appropriate points in the project. Therefore, we conclude the finding of no significant impact is justified.

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<sup>38</sup> See Transco's November 26, 2012 Supplemental Information filing.

<sup>39</sup> See EA at 39.

#### **4. Impacts on Groundwater and Water Supply Wells**

53. The PSC and Messrs. Alejnikov and Jones are concerned about effects on the local aquifer and the potential disruption or loss of function of private, residential water supply wells due to project-related activities, especially blasting. They further state that disturbed wells need to be restored or affected residences should be connected to municipal water supplies.

54. As stated in the EA, Transco will file, prior to conducting blasting activities, a project-specific blasting plan.<sup>40</sup> Specifically, the plan will address pre- and post-blasting surveys of water supply wells within 150 feet of blasting areas. If evidence of damage is detected after blasting, Transco will repair or replace the affected water supply wells. Based on Transco's commitment to conduct well surveys and address damages, we concur with the EA's finding that replacing the pipeline would not significantly affect water supply wells.

#### **5. Threatened and Endangered Species**

55. Mr. Goodman notes that Transco did not adopt a U.S. Fish and Wildlife Service (USFWS) recommendation to complete in-stream construction activities between September 1 and March 31 to minimize potential effects on the federally-threatened bog turtle, and states that the recommendation could be accommodated. In its application, Transco stated that it was unable to comply with the USFWS timing recommendation due to its compliance with a trout fishery requirement from Pennsylvania prohibiting construction between October 1 and June 15.<sup>41</sup> The USFWS recommendation allows for construction to occur outside the suggested timing window if other measures are implemented, including pre-construction surveys and exclusion, and additional agency consultation. As stated in the EA, Transco committed to implement additional bog turtle conservation measures noted by the USFWS, and the EA concludes that the project is not likely to adversely affect the bog turtle.<sup>42</sup> The USFWS has concurred with this determination, and the Commission's consultation requirements under the Endangered Species Act are complete.

56. Mr. Goodman and the PSC also express concern about the thyme-leaved pinweed, a Pennsylvania plant species of concern. The EA states that a Pennsylvania Natural

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<sup>40</sup> *See id.* at 12.

<sup>41</sup> *See id.* at 15-16 (discussing the time restriction for construction activities to avoid the trout stocking season).

<sup>42</sup> *See id.* at 19.

Diversity Inventory review determined that no impact is likely to occur to Pennsylvania endangered, threatened and rare species.<sup>43</sup> However, specific to the thyme-leaved pinweed, Transco agreed, during initial consultations with the Pennsylvania Department of Conservation and Natural Resources (PADCNR), to identify, avoid, and minimize impacts to these plants, if encountered during construction. Transco will train construction personnel to identify this species, and collect seeds for revegetation. Transco will also have a botanist revisit impacted populations during the second and fifth years after construction. The botanist will also complete a survey form and submit it to the PADCNR. As a result, no further coordination or mitigation is required.

## 6. Migratory Birds

57. Ms. Winters states that the USFWS publication “Birds of Conservation Concern 2008” cited in the EA is outdated. Ms. Winters also expresses concern that the clearing of trees for the project would exacerbate edge effects, increase habitat access for invasive birds, and that while the impact for a single project may seem minimal, the cumulative impacts of multiple projects must be considered. She also states that Transco should construct the project when birds are not migrating. Furthermore, the PSC states that construction activities should be restricted to the existing right-of-way to protect migratory birds.

According to the USFWS’ Migratory Bird Program website, the Birds of Conservation Concern 2008 publication is the most recent version and accurately describes the USFWS’ efforts to carry out its mandate to identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the ESA.<sup>44</sup> As proposed, Transco’s construction activities would be conducted during the summer, avoiding the spring migration and nesting seasons. Additionally, based on subsequent consultations with the USFWS, and the minimal amount of land (less than 5 acres of trees adjacent to existing rights-of-way) to be cleared as described in the EA, we find that the project will not result in significant increased habitat for invasive birds. The EA identified past, present, and reasonably foreseeable future projects that have or could potentially impact the resources impacted by Transco’s proposed project. As stated in the EA, we find that cumulative impacts, if any, on migratory bird habitats would be negligible.<sup>45</sup> We conclude that Transco’s efforts to minimize impacts on migratory birds, including the planting of shrubs and trees

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<sup>43</sup> See *id.*

<sup>44</sup> USFWS Migratory Bird Program, <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BCC.html>.

<sup>45</sup> See EA at 18 and 36.

in riparian areas, are sufficient and do not believe that further reducing workspace and requiring additional mitigation are warranted.

## 7. Tree Clearing

58. The PSC, the Sierra Club, Mr. Alejnikov, and Ms. Winters comment about the loss of trees resulting from the project and request that additional measures be taken to avoid, minimize, and mitigate the loss of trees, including reducing workspaces, planting additional (mature) trees, and monitoring restoration efforts. The PSC requests that the long-term impacts of deforestation be examined. The PSC also states that the ash tree plantings identified as part of Transco's revegetation and restoration efforts could introduce the Emerald ash borer (*Agrilus planipennis* Fairmaire), an invasive species associated with ash trees identified in 28 Pennsylvania counties.

59. The EA acknowledges that upland-wooded/forested vegetation would be cleared, resulting in a long-term loss of this type of vegetation.<sup>46</sup> Although long-term, this impact is not permanent. To minimize and mitigate this impact, Transco will plant over 150 trees and shrubs ranging in height from 2 to 10-feet in disturbed riparian areas. Commission staff considered the request to plant mature trees. The success rate of planting mature trees relative to Transco's proposed tree plantings would likely be considerably lower due to the sensitivity of mature tree roots, particularly those of the tree species to be planted. Therefore, we find that Transco's proposed tree plantings are acceptable.

60. Special native seed mixes will be used to reseed the temporary workspaces, and woody species and trees will be allowed to naturally revegetate. The special native seed mix will include switchgrass, little and big bluestem, indiagrass, Virginia wildrye, and other species. As discussed further below, monitoring of Transco's restoration efforts will occur to ensure that long-term impacts are minimized. Transco will conduct follow-up inspections of all disturbed areas after the first and second growing seasons to determine the success of revegetation. Transco will continue revegetation efforts until restoration is successful. Although there will be a long-term impact, the scope of the impact will be limited to less than five acres. Transco's SESC Plans and DSC Plan identify the locations and specific trees that will be replanted. Easement agreements may also specify tree plantings and other landowner-specific impact minimization and mitigation measures. As previously stated, Transco's proposed tree planting plan is acceptable and sufficient. We also note that the CCCD and the PADEP approved the plan.

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<sup>46</sup> See *id.* at 17.

61. Regarding the potential introduction of the Emerald ash borer, contrary to PSC's comments, Transco is not proposing to, and will not plant ash trees. Transco will plant dogwood, black willow, hackberry, white oak, tulip poplar, black gum, black cherry, American beech, eastern redbud, musclewood, and American sycamore.

## **8. Effectiveness of Erosion and Sediment Controls**

62. The PSC and Messrs. Farrell and Alejnikov express concern about Transco's ability to implement the mitigation described in the EA, and the effectiveness and success of Transco's proposed erosion and sediment control measures. As described previously, the EA states that Transco's project-specific SESC Plans, including the proposed restoration and revegetation measures are acceptable and are consistent with the Commission's Plan and Procedures.<sup>47</sup> Further, as noted previously, the CCCD and the PADEP reviewed and approved these plans.

63. The NGA gives Transco certain rights of operation and maintenance, but with those rights come certain responsibilities such as the responsibility to restore property to the condition in which it was found. Transco's SESC Plans state that restoration shall be considered successful if the right-of-way surface condition is similar to adjacent undisturbed lands, construction debris is removed, revegetation is successful, and proper drainage has been restored. Follow-up inspections of all disturbed areas will be conducted after the first and second growing seasons to determine the success of revegetation. The project area will also be subject to inspection by Commission staff (and its contractors), as well as representatives of the PADEP and the CCCD. Also, per Environmental Condition 9 of this order, Transco will not be given approval to place the project into service until a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily. Copies of all inspection reports conducted by Commission staff will be available in eLibrary. Consequently, we are satisfied that adequate means exist to ensure Transco successfully implements the required mitigation.

## **9. Environmental Compliance and Monitoring**

64. Mr. Alejnikov and the PSC express concern about the integrity of the environmental compliance and inspection processes. Mr. Alejnikov specifically states that occasional inspection by the local municipalities may result in missing certain developments, which could have a harmful impact. The PSC also expresses concern about Transco's long-term commitment to ensure successful restoration of impacted lands. The EA states that at least one Environmental Inspector (EI) would be onsite during abandonment and construction activities. The EI would have the authority to stop

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<sup>47</sup> See *id.* at 5.

activities that violate the environmental conditions of the certificate, state, and federal environmental permit conditions or landowner requirements; and to order appropriate corrective action.<sup>48</sup> Also, Environmental Condition 7 of this order requires Transco to file weekly status reports with the Secretary documenting environmental compliance. Transco will also be subject to monthly inspections by Commission staff (or its contractors) which also have the ability to stop work and require corrective actions. Furthermore, the Commission's Office of Enforcement has the ability to investigate allegations of Transco's non-compliance, and issue fines, if appropriate. The frequency of environmental inspections during construction by state and local agencies is the responsibility of those respective agencies. We believe Transco has an on-going obligation to operate its pipeline and conduct all maintenance and restoration activities in compliance with the Commission's Plan and Procedures in perpetuity. Nothing in the Commission regulations or precedent indicates that Transco's obligations to restore disturbed property ends with the completion of construction.

#### 10. Brandywine Creek

65. Messrs. Goodman and Farrell provide comments on the EA's analysis of potential impacts on Brandywine Creek. Specifically, Mr. Goodman states that the EA does not address Pennsylvania's prior requirement that Transco use a horizontal directional drill (HDD) to cross Brandywine Creek, prior damage to Brandywine Creek, stream surveys, and aquatic ecosystem restoration and monitoring. Mr. Farrell contends that changes to the flow conditions in Brandywine Creek as a result of the use of coffer dams are not similar to a rain event as characterized in the EA.

66. As described previously, the PADEP issued Transco a Water Obstruction and Encroachment Permit on November 14, 2012, for the modified open cut crossing described in the EA. Permit requirements issued by the PADEP with respect to previous projects are no longer applicable. The cumulative impacts analysis described in the EA account for past project impacts. The proposed crossing of Brandywine Creek was surveyed by Transco and the results of this survey and others were included in its application. The impacts on Brandywine Creek have been determined to be temporary and not significant based on the required construction and restoration procedures. As stated previously, the reporting requirements and the inspections that our staff (and/or contractors) will conduct will enable the Commission to monitor construction and restoration efforts, and ensure Transco's compliance with this order. Regarding the potential impacts from use of coffer dams during construction, we agree with the EA's assessment that modifying and increasing of flow around the coffer dam would likely be comparable to the increased flow within a waterbody that results from a storm (or "rain event").

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<sup>48</sup> See *id.* at 8.

## 11. Victory's Protest

67. Victory argues that Transco's proposed coffer dam and open-cutting methods would alter the composition and sedimentation load of Brandywine Creek, thereby causing short-term harm to the creek. Victory also argues that replacing the pipeline across Ludwig's Run, a tributary of Brandywine Creek, could potentially cause long-term impacts to the stream's "composition, biology, and sedimentation load."<sup>49</sup> Because the creek feeds into the public water supply that Victory uses to produce its beer, Victory argues that the proposed project could jeopardize its business.

68. As discussed above and in the EA, Transco's proposed project could result in a temporary increase in turbidity and sedimentation in Brandywine Creek and Ludwig's Run, which could impact downstream water quality and the DMWA public water supply. However, we agree with the EA's determination that Transco proposed minimization and mitigation measures and plans, as described in the SESC, DSC, DMWA Protection, and Spill plans, would minimize impacts to these waterbodies.<sup>50</sup> Aside from these temporary impacts, the EA does not anticipate long-term impacts on the waterbodies crossed. In addition, the municipal water authority, DMWA, reviewed and approved Transco's DMWA Protection Plan and stated that "it is very confident that the Protection Plan will enable it to provide high quality water to its customers during the construction phase of the replacement pipeline."<sup>51</sup> Therefore, with the environmental measures provided in this order and Transco's proper implementation of its plans, we believe that Transco's project would not result in significant effects to the quality of Victory's water supply. Accordingly, we deny Victory's protest.

## 12. Alternatives

69. In their comments on the EA, the Sierra Club and the PSC ask the Commission to consider alternatives to Transco's proposed project. The Sierra Club states that the EA's alternatives analysis did not consider the use of an expandable inspection device. The Sierra Club also questions the EA's finding that constructing permanent aboveground facilities would result in greater impacts on the environment than the proposed open-cut. Lastly, the Sierra Club states that the EA fails to specify the amount of land that would be temporarily impacted by an HDD. The PSC requests that instead of approving the proposal to use approximately 9 acres of temporary right-of-way, we require construction to be restricted to the greatest extent possible with the existing right-of-way and on

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<sup>49</sup> See Victory's Protest at 1.

<sup>50</sup> See EA at 14-15.

<sup>51</sup> Transco's December 10, 2012 Filing at 3.

stable, flat land areas between the existing right-of-way and Norwood Road, which would include Norwood Road, Shady Acres Campgrounds, and Creek Road.

70. Regarding the evaluation of an “expandable,” “flexible,” or “multidiameter” type of internal pipeline inspection device, Transco stated in a supplemental filing to its application that it consulted with inspection device makers, such as GE Energy, Rosen Inspection Technologies, and Enduro Pipeline Services, and was informed that a device capable of inspecting a 30-inch- and 42-inch-diameter pipeline was not commercially available.<sup>52</sup> Further, to the extent a device capable of inspecting a 30-inch- and 42-inch-diameter pipeline were available, it is our understanding that its use may be limited by existing pipeline bends and irregularities. Moreover, use of an “expandable” inspection device, even if feasible, would not address the system reliability issues that Transco identified as resulting from operation of its system at two MAOPs. Therefore, we conclude the use of a multidiameter pipeline inspection device as an alternative to the proposed action is not preferable.

71. The Sierra Club identifies the placement of riprap to support the restoration of stream banks in conjunction with replacement of the existing 30-inch-diameter pipeline segment crossing Brandywine Creek as an impact that may be greater than those associated with the placement of permanent aboveground facilities to support separate 30-inch- and 42-inch-diameter pipeline inspection devices.<sup>53</sup> We disagree. The use of riprap to aid in the restoration of stream banks is a widely accepted and used technology, and the use and placement of riprap to facilitate the restoration of the Brandywine Creek’s banks has been approved by Pennsylvania and Chester County officials. In contrast, construction of the alternative aboveground facilities would permanently impact soils, vegetation, wildlife, land-use, visual resources, the Brandywine Creek floodplain, and adjacent resources.<sup>54</sup> Furthermore, as noted above, leaving the existing 30-inch-diameter stream crossing segment in place would not address the system reliability issues that Transco identified as resulting from operation of its system at two MAOPs. We have found no evidence to support the contention that the open-cut (and subsequent restoration) of Brandywine Creek would result in permanent impacts equivalent or greater than those resulting from the construction of permanent aboveground facilities.

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<sup>52</sup> See Transco’s September 5, 2012 Data Response No. 1.4.

<sup>53</sup> As discussed more fully in the EA, the aboveground facilities alternative involves leaving the existing 30-inch-diameter pipeline segment in place and installing a 42-inch pig receiver and 30-inch pig launcher on the west bank of Brandywine Creek and a 30-inch pig receiver and 42-inch pig launcher of the east side of Norwood Road in order to enable internal inspections of the existing pipeline segments to be conducted separately. See EA at 38.

<sup>54</sup> See *id.*

72. The Sierra Club also states that the EA did not identify the specific amount of temporary workspace that would be required to implement an HDD in lieu of the open cut crossing. To implement an HDD, Transco would require the temporary use of approximately 17.13 acres of land as compared to approximately 13.54 acres of land that would be temporarily used to implement the proposed open-cut crossing.<sup>55</sup> This is in part because the use of an HDD requires additional temporary workspace at both ends of the proposed drill location to accommodate the HDD equipment. Additionally, Transco would temporarily require land for pipeline “pullback” and a pipe storage/contractor yard. Both the proposed open-cut and HDD alternative would require clearing of forested lands, with the HDD alternative requiring the clearing of approximately one acre less forested land than the proposed open-cut. However, implementation of an HDD would introduce anticipated drilling challenges resulting from the underlying fractured bedrock and take an additional two to three months to complete, thus imposing additional impacts on the environment and nearby communities.<sup>56</sup> Therefore, we believe the HDD alternative does not provide a significant environmental advantage when compared to the proposed open-cut of Brandywine Creek, and is not preferable to the proposed open-cut crossing method.

73. The PSC requests that the Commission evaluate a Brandywine Creek Crossing alternative that would use the existing right-of-way, adjacent land south along Norwood Road, and lands along Creek Road and within Shady Acres Campground. We considered the PSC’s alternative, and find that although implementation of its alternative would use approximately one less acre of land, it will only transfer the impacts from one area to another and will still require tree clearing, resulting in similar impacts to that of the proposed action. Additionally, the use of lands as described by the PSC would not be feasible because it would not offer enough space to facilitate construction. Therefore, we find that this new alternative does not provide a significant environmental advantage when compared to the proposed open-cut of Brandywine Creek, and is not preferable to the proposed action.

74. Based on the analysis in the EA, the Commission finds that Transco’s proposed pipeline replacement is an environmentally acceptable action that would not constitute a major federal action significantly affecting the quality of the human environment if the abandonment and construction activities are conducted in accordance with Transco’s application and as described in the EA and in compliance with the environmental conditions in Appendix B to this order.

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<sup>55</sup> Approximately 2.6 acres of the 13.54 acres would use Transco’s existing Mainline A permanent right-of-way. *See id.* at 19.

<sup>56</sup> *See id.* at 37-38.

75. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.<sup>57</sup>

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

77. At a hearing held on July 18, 1013, the Commission received and made part of the record in this proceeding all evidence, including the application, as amended, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

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

(B) Permission for and approval of Transco's abandonment of the pressure control systems installed at the Downingtown Meter Station and Compressor station 200, is granted.

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

- (1) Transco's completing the authorized construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Transco's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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<sup>57</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (3) Transco's compliance with the environmental conditions listed in Appendix B to this order.

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

(E) The untimely motions to intervene are granted.

(F) Victory's protest is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

**Timely Intervenors**

Atmos Energy Corporation  
Berks Gas Truth  
Borough of West Chester Mayor Comitta  
Jeffrey J. Bush  
Calpine Energy Services, L.P.  
Sarah Caspar  
Carolina Power & Light Company  
Delaware Riverkeeper Network  
Downingtwn Mayor Josh Maxwell  
Exelon Corporation  
Steve Farrell  
Florida Power Corporation  
Guardians of the Brandywine, Inc.  
National Fuel Gas Distribution Corporation  
National Grid Gas Delivery Companies  
New Jersey Natural Gas Company  
Pennsylvania State Senator Andrew Dinniman  
Pennsylvania State Senator John C. Rafferty, Jr.  
Piedmont Natural Gas  
Pipeline Safety Coalition  
Roberta Winters

## Appendix B

### Environmental Conditions

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

1. Transco shall follow the construction procedures and mitigation measures described in its application, supplements, and as identified in the environmental assessment (EA), unless modified by this order. Transco must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources associated with abandonment, construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to ensure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from activities associated with the abandonment, construction and operation of the project.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the Environmental Inspector'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, and shall include all of the staff's recommended facility locations identified in the EA. As soon as they are available, and before the start of construction, Transco 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 this order. All requests for modifications of

environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally-listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps, sheets, 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 the Transco's Erosion and Sediment Control Plan, 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. **At least 60 days before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:

- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff environmental information requests), identified in the EA, and required by this order;
  - b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. the location and dates of the environmental compliance training and instructions Transco will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - e. the company personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (i) the completion of all required surveys and reports;
    - (ii) the environmental compliance training of onsite personnel;
    - (iii) the start of construction; and
    - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any scheduling 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 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 the corrective actions implemented in response to all instances of noncompliance, and their cost;

- e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and copies of any correspondence received by Transco from other federal, state or local permitting agencies concerning instances of noncompliance and Transco's responses.
8. **Prior to receiving written authorization for the Director of OEP to commence construction of any project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Transco must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been abandoned, constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Transco shall not begin construction of project facilities until:**
- a. Transco files with the Secretary the following:
    - (1) documentation demonstrating that the Unanticipated Discovery Plan was submitted to the Pennsylvania State Historic Preservation Officer for comments;
    - (2) any outstanding updates, reports, plans, or special studies, and any State Historic Preservation Officer comments on these; and
    - (3) any comments from federally-recognized tribes.
  - b. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Transco in writing that 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.**”

12. **Prior to construction**, Transco shall file, with the Secretary for review and written approval by the Director of OEP, a Brandywine Creek Construction Noise Mitigation Plan. The mitigation plan shall identify the measures Transco commits to implement to reduce noise levels at noise sensitive areas 1 and 2, and any resulting detailed noise analyses of revised construction noise impacts with mitigation measures implemented, as applicable.
13. Transco shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Transco shall mail the complaint procedures to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, Transco 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 Transco'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 Transco's Hotline, they should contact the Commission's Dispute Resolution Service Helpline at 877-337-2237 or at [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov).
  - b. In addition, Transco shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
    - (1) the identity of the caller and date of the call;
    - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
    - (3) a description of the problem/concern; and
    - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

14. **Prior to construction**, Transco shall file, with the Secretary a copy of the final Struble Trail Crossing Plan, and copies of its Blasting and Traffic Plans.