

145 FERC ¶ 61,152  
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. CP13-30-000

ORDER ISSUING CERTIFICATE

(Issued November 21, 2013)

1. On December 19, 2012, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing it to construct and operate an approximately 91-mile-long, 24-inch diameter pipeline adjacent to its existing Southern Virginia Lateral "A", approximately 7 miles of 24-inch diameter greenfield pipeline, a compressor station, and related facilities in Virginia, Maryland, Pennsylvania, and New Jersey (Virginia Southside Expansion Project). The project will enable Transco to provide 270,000 dekatherms per day (Dth/d) of incremental firm transportation service to Virginia Power Services Energy Corp., Inc. (Virginia Power) and Piedmont Natural Gas Company, Inc. (Piedmont). For the reasons discussed below, the Commission will grant Transco's requested authorization, subject to certain conditions.

**I. Background and Proposal**

2. Transco is a natural gas company with a transmission system that extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. Transco proposes to construct and operate facilities in order to provide an additional 270,000 Dth/d of firm transportation service on its existing mainline system. Specifically, Transco proposes to:

- construct an approximately 91-mile-long, 24-inch-diameter pipeline adjacent to its existing South Virginia Lateral “A” pipeline in Pittsylvania, Halifax, Charlotte, Mecklenburg, and Brunswick Counties, Virginia (South Virginia Lateral “B” pipeline);
- construct approximately 7 miles of 24-inch-diameter pipeline extending north from the end of the proposed South Virginia Lateral “B”, to Virginia Electric and Power Company’s (VEPCO) proposed power station in Brunswick County (Brunswick Lateral);
- construct a new compressor station adjacent to Transco’s existing Compressor Station 165 in Pittsylvania County, consisting of two 10,915-horsepower (hp) (ISO) gas turbine-driven compressor units and an interconnection and pressure regulator between the South Virginia Lateral “A” and South Virginia Lateral “B” pipelines (Compressor Station 166);<sup>1</sup>
- construct an interconnection and pressure regulating station between the South Virginia Lateral “A” and the proposed South Virginia Lateral “B” pipelines in Brunswick County;
- construct a meter station, line heaters, and pig<sup>2</sup> receiver at the terminus of the Brunswick Lateral;

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<sup>1</sup> Transco states that it evaluated the technical feasibility and commercial viability of installing and operating a waste heat recovery facility in conjunction with proposed Compressor Station 166, as discussed in the Interstate Natural Gas Association of America White Paper entitled “*Waste Energy Recovery Opportunities for Interstate Natural Gas Pipelines*” issued in February 2008 (INGAA White Paper). Transco states that with the addition of the new gas turbine-driven compressor units, Station 166 will not meet the required threshold of total gas turbine station capacity of at least 15,000 hp operating at an annual load factor of 60 percent or greater. Transco asserts that only one of the units is required to move the total project volume and that the other unit will provide 100 percent redundancy for reliability purposes. Thus, Transco has determined that waste heat recovery is not economically viable at this location. We note that Transco should continue to monitor Compressor Station 166, and should the station meet the waste heat recovery parameters in the INGAA White Paper, Transco should post such information on its electronic bulletin board.

<sup>2</sup> A “pig” is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

- construct seven mainline valves along the proposed South Virginia Lateral “B” pipeline; and
- modify mainline valves and meter stations in Maryland, Pennsylvania, New Jersey, and North Carolina, and at Compressor Station 205 in New Jersey to enable bi-directional flow on Transco’s mainline.

4. Transco states that the proposed project is intended to modify Transco’s existing mainline system to allow for natural gas to flow south rather than north, to provide natural gas transportation capability from Transco’s pooling point in Mercer County, New Jersey to VEPCO’s proposed 1,300 megawatt, combined-cycle, natural gas-fired power station in Brunswick County, Virginia (Brunswick County Power Station),<sup>3</sup> and to Piedmont’s existing Pleasant Hill meter station in Northampton County, North Carolina.

5. Transco held an open season from April 4 to 25, 2012, and a supplemental open season from November 2 to 8, 2012. Transco executed binding precedent agreements with Virginia Power, an affiliate of VEPCO, and Piedmont for 250,000 Dth/d and for 20,000 Dth/d, respectively, of incremental firm transportation service for 20-year terms. The precedent agreements subscribe all of the incremental capacity to be created by the Virginia Southside Expansion Project.

6. Transco estimates that the proposed facilities will cost approximately \$298 million. Transco states that the project will be financed initially through short-term loans and funds on hand and that permanent financing will be arranged at a later date as part of Transco’s overall, long-term financing program.

7. Transco proposes to provide the firm transportation service for Virginia Power and Piedmont under its existing Rate Schedule FT. Transco proposes to charge an incremental reservation charge for transportation service utilizing the Virginia Southside Expansion. In addition, Transco proposes to charge its generally-applicable system fuel retention and electric power rates. Transco states that Virginia Power and Piedmont elected to pay a negotiated rate for the proposed firm transportation service.

8. Transco requests confirmation that if it files either an amendment to the instant application or a new NGA section 7(c) application for an expansion of the project authorized herein, and if the rate for that future expansion is lower than the then-current recourse rate for Virginia Southside Expansion service, the costs of that expansion would qualify to be rolled into the rates of the Virginia Southside Expansion (i.e., the costs of

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<sup>3</sup> The Brunswick County Power Station will replace two coal-fired power plants.

the instant project and the costs of the future project would be rolled together into a single rate).

9. Finally, Transco proposes to include non-conforming provisions in its service agreements and requests that the Commission find that the non-conforming provisions constitute permissible deviations from Transco's pro forma service agreement.

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

10. Notice of Transco's application was published in the *Federal Register* on January 11, 2013 (78 Fed. Reg. 2380). The parties listed in Appendix A filed timely, unopposed motions to intervene.<sup>4</sup>

11. The North Carolina Utilities Commission and Piedmont filed comments in support of the Virginia Southside Expansion Project. Consolidated Edison Company of New York, Inc. (ConEd) and Philadelphia Gas Works (PGW) filed a conditional protest and request for confirmation of Commission policy. The Transco Municipal Group and Piedmont filed answers to ConEd and PGW's protest. While answers to protests are not allowed by the Commission's rules, the Commission will permit TMG and Piedmont's answers because they will assist the Commission in its decision making.<sup>5</sup> H. Carrington Edmunds, Jr., Nora T. Short, Barbara T. Yeattes, and Wayne and R. Page Seamster, directly affected landowners, filed comments. The landowners object to moving the pipeline away from the existing South Virginia Lateral "A" pipeline right-of-way onto their properties. The landowner comments and the protest and answers are discussed below.

12. PSEG Energy Resources & Trade, LLC filed a late motion to intervene. This movant has demonstrated an interest in this proceeding and the untimely motion to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motion to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.<sup>6</sup>

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<sup>4</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2013).

<sup>5</sup> *See, e.g., Starks Gas Storage, L.L.C.*, 141 FERC ¶ 61,014 (2012).

<sup>6</sup> 18 C.F.R. § 385.214(d) (2013).

### **III. Discussion**

13. 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.

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

14. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>7</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. Under this policy, the threshold requirement for an applicant proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

16. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined

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<sup>7</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).

that generally where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>8</sup> That is the case here. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

17. We also find that the proposal will not degrade service to Transco's existing customers, since Transco will be able to continue to meet its existing firm obligations. In addition, no pipeline company or its customers has protested Transco's application. Thus, we find the proposed project will not result in any adverse impact on Transco's existing customers or on other existing pipelines or their captive customers.

18. In order to minimize impacts on landowners, Transco will construct the proposed facilities primarily on existing rights-of-way and areas adjacent to existing rights-of-way. Of note, approximately 90 percent of the proposed South Virginia Lateral "B" pipeline will be within or adjacent to the existing South Virginia Lateral "A" permanent right-of-way. Transco will construct Compressor Station 166 adjacent to existing Compressor Station 165, on land owned by Transco. Accordingly, we find that for purposes of our consideration under the Certificate Policy Statement, Transco has designed the project to minimize adverse economic impacts on landowners and surrounding communities.

19. The proposed Virginia Southside Expansion Project will enable Transco to provide 270,000 Dth/d of incremental firm service from its Zone 6 Station 210 Pooling Point in New Jersey to Virginia Power's and Piedmont's respective delivery points under long-term contracts. The project will deliver natural gas supplies to VEPCO's planned Brunswick County Power Station, which will increase the availability of electricity on the national power grid. Based on the benefits the project will provide and the minimal adverse effect on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of Transco's proposal, as conditioned in this order.

## **B. Initial Recourse Rates**

20. For the Virginia Southside Expansion services, Transco proposes to charge an incremental reservation charge under its existing Rate Schedule FT. Transco calculated a

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<sup>8</sup> See *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002); *Eastern Shore Natural Gas Co.*, 95 FERC ¶ 61,344 (2001).

daily recourse reservation rate of \$0.60423 per dekatherm<sup>9</sup> by dividing the incremental cost of service of \$59,546,892 by an annual transportation quantity of 98,550,000 dekatherms (270,000 dekatherms multiplied by 365 days). Underlying the \$59,546,892 incremental cost of service is a \$275,674,057 gas plant in service, calculated by reducing the \$298,726,152 estimated cost of facilities by a \$23,052,096 grant (post-tax) from the Virginia Tobacco Indemnification and Community Revitalization Commission.<sup>10</sup> Transco used a pre-tax return of 15.34 percent, which Transco states is the pre-tax return underlying the design of its settlement rates in Docket No. RP01-245-000.<sup>11</sup> Transco states that its operation and maintenance expenses are based on engineering estimates for operation and maintenance expenses of similar facilities. Transco proposed to use its currently effective onshore transmission depreciation rate (including negative salvage) of 2.79 percent.<sup>12</sup>

21. The Commission has reviewed the proposed cost of service and the proposed incremental recourse rate and finds that they are reasonable with the exception of the depreciation and negative salvage rates. On August 27, 2013, in Docket No. RP12-993-000, Transco filed a Settlement which, *inter alia*, establishes depreciation rate of

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<sup>9</sup> Transco's currently effective daily reservation charge for transportation service between Zones 5 and 6 is \$0.39039.

<sup>10</sup> Transco states that on January 10, 2012, the Virginia Tobacco Indemnification and Community Revitalization Commission approved a resolution to contribute \$30 million (pre-tax) over a three-year budget timeframe to benefit shippers served by the Virginia Southside Expansion Project. Transco states that it will record the grant funds by debiting Account 131, Cash, crediting Account 107, Construction Work and Progress, and crediting Account 421, Miscellaneous Non-Operating Income. Transco states that the credit to Account 107 will be recorded to the appropriate work orders offsetting the actual costs incurred for the gas plant in process of construction. Transco also states that the credit to Account 421 will be the portion of the funds that compensate Transco for the federal and state income tax liability resulting from receipt of the grant. *See* Transco's May 28, 2013 response to Data Request No. 3.

<sup>11</sup> *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002).

<sup>12</sup> *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008) (Order Approving Settlement filed on November 28, 2007). Appendix A to the November 28, 2007 Settlement specifies a depreciation rate for onshore transmission plant (other than turbines) of 2.10 percent and a negative salvage rate (other than turbines) of 0.69 percent.

2.04 percent for onshore plant and a negative salvage rate of zero.<sup>13</sup> This proceeding is still pending before the Commission. Accordingly, when it files actual tariff records reflecting its initial recourse rates prior to putting the Virginia Southside Project into service, Transco is directed to recalculate its proposed maximum incremental recourse rate to reflect the depreciation and negative salvage rates approved in the Commission's ultimate order on the Settlement. Consistent with the Certificate Policy Statement, the Commission directs Transco to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's 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 must be provided consistent with Order No. 710.<sup>14</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.

### C. Negotiated Rates

22. Transco states that Virginia Power and Piedmont elected to pay negotiated rates for all of the Virginia Southside Expansion Project capacity. Transco must file all negotiated rate agreements, or a tariff record describing the negotiated rate agreements associated with this project, in accordance with our treatment of negotiated rates<sup>15</sup> and our statement of policy on alternative rates.<sup>16</sup>

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<sup>13</sup> See Appendix A to August 27, 2013 Stipulation and Agreement (Settlement) filed in Docket No. RP12-993-000.

<sup>14</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, *FERC Stats. & Regs.* ¶ 31,267, at P 23 (2008).

<sup>15</sup> See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220 (2010).

<sup>16</sup> *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3<sup>rd</sup> 918 (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006) (Alternative Rate Policy Statement).

**D. Fuel Retention and Electric Power Rates**

23. Transco proposes to charge Virginia Power and Piedmont its generally applicable system fuel retention and electric power rates. Based on a study that was designed to determine the impact of fuel consumption (compressor fuel, plus the fuel equivalent of electricity consumed), Transco determined that the project would result in a 33.02 percent reduction in fuel use attributable to existing shippers.<sup>17</sup> Based on the fuel benefit provided by the project to other Transco shippers, the Commission approves Transco's proposal to charge its generally applicable system fuel retention and electric power rates.

**E. Rolled-In Rate Treatment of Potential Subsequent Expansion**

24. Transco seeks confirmation that if it files either an amendment to the instant application or a new certificate application for a further expansion of firm transportation capacity utilizing all or part of the same path as the Virginia Southside Expansion Project, and an incremental recourse reservation rate calculated for such a subsequent expansion would be lower than the then-current recourse reservation rate applicable to service utilizing the Virginia Southside Expansion Project, then the costs of such an expansion would qualify to be rolled in with the costs of the Virginia Southside Expansion Project. In support of this request, Transco points to the Commission policy allowing rolled-in rate treatment where a subsequent project benefits from the inexpensive expansibility made possible by a previous more expensive project and that the pipeline may request a pre-determination for such rate treatment in the certificate application for the subsequent project.<sup>18</sup>

25. ConEd and PGW object to Transco's request, contending that Transco is making the request in a vacuum without the facts necessary for the Commission to make a determination. They argue that Transco presents no information as to what facilities would be constructed, where they would be constructed, or whether the "inexpensive expansibility" would be made possible solely because of the current project.<sup>19</sup> ConEd

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<sup>17</sup> The study was based on ten representative days from 2011 and the portions of the facilities from Compressor Stations 165-205, and the proposed Compressor Station 166. See Exhibit Z-1 to Transco's Application.

<sup>18</sup> Citing *Kern River Gas Transmission Co.*, 127 FERC ¶ 61,223 (2009).

<sup>19</sup> Cf. *Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,001, at P 31 (2010) (where a specific second set of facilities were proposed and a determination was made that those facilities enhanced the original project and met the definition of "inexpensive expansibility" the Commission required the pipeline to charge the higher system rates rather than the lower incremental rates).

and PGW also argue that Transco's system customers should not have to subsidize a future project if the cost of service for such a project results in incremental rates that are lower than Transco's system rates. They request that the Commission confirm that if the incremental rates for Virginia Southside Expansion together with any future project costs fall below Transco's then-existing system rates, Transco must propose to roll the costs of those projects into its system rates in its next rate case.

26. Piedmont and the Transco Municipal Group object to ConEd and PGW's request for confirmation that incremental project rates may not be lower than general system rates. They assert that the circumstances considered by the Commission when choosing to grant either rolled-in or incremental rate treatment apply only to new pipeline expansions and are not reconsidered over the life of the project. In addition, they contend that ConEd and PGW's request is a collateral attack on various Commission rulings in Transco's on-going rate case in Docket No. RP12-993-000. They maintain that ConEd and PGW's request for confirmation occurs in the absence of facts that demonstrate that the request is just and reasonable. Further, Piedmont notes that Transco is not proposing to roll in the rates for any particular project, but rather, is seeking an advisory opinion. Finally, the Transco Municipal Group notes that the proposed incremental recourse reservation rate for the Virginia Southside Expansion Project is roughly three times higher than the existing system Rate Schedule FT rate for transportation between Zones 5 and 6.

27. The Certificate Policy Statement anticipates situations in which inexpensive expansibility is made possible because of earlier, costly construction.<sup>20</sup> However, the Certificate Policy Statement also states that "it is the Commission's intent to evaluate specific proposals based on the facts and circumstances relevant to the application and to apply the criteria on a case-by-case basis."<sup>21</sup> Without a specific proposal, the Commission cannot make the requested determinations. Thus, the Commission denies the requests of Transco, ConEd, and PGW for a predetermination regarding the rate treatment that might be appropriate for a future expansion of the Virginia Southside Expansion Project.

#### **F. Non-Conforming Provisions to Service Agreements**

28. Transco states that it will file service agreements that deviate in several respects from the pro forma Rate Schedule FT Service Agreement contained in its tariff.

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<sup>20</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746.

<sup>21</sup> *Id.*

29. The first non-conforming provision in Virginia Power's FT Service Agreement specifies that deliveries by Transco will not be less than 720 pounds per square inch gauge at the Brunswick County Power Station (unless the parties agree otherwise). It further specifies that Transco will refund demand charges for any day on which the plant is unable to operate because Transco failed to meet the pressure guarantee. Transco states that the pressure guarantee provision is necessary to reflect the unique circumstances involved with the design of Virginia Power's Brunswick County Power Station. In addition, Transco states that its proposals provide for the installation of redundant compression to ensure deliveries of natural gas at adequate pressures to the Brunswick County Power Station, which will only be served by Transco. Transco further states that the facility design and pressure guarantee is essential for both Virginia Power's participation in the project and the economic viability of the project.

30. With respect to the demand charge refund, Transco states that the provision is required by Virginia Power as an incentive for Transco to meet the minimum pressures needed by Virginia Power at the Brunswick County Power Station. Transco also states that this provision does not give Virginia Power any priority to capacity and does not result in Virginia Power receiving a different quality of service than other shippers. Therefore, Transco states that the pressure guarantee provision does not present a significant potential for discrimination among shippers.

31. The second non-conforming provision deals with the extension of the term of the contract. Exhibit C, "Specification of Negotiated Rate and Term," of both Virginia Power's and Piedmont's Rate Schedule FT Service Agreements will include language allowing Virginia Power and/or Piedmont to extend the primary term of the agreement for an additional term of at least one year at the applicable recourse rate, provided that the extension request was made with at least 13 months' notice.

32. Finally, Exhibit C to the Virginia Power service agreement addresses the rights of Virginia Power and other Anchor Shippers (as defined in Transco's open season for the project),<sup>22</sup> and contains contractual incentives to make binding commitments to the project. This non-conforming provision has two components. The first provides that Virginia Power would be eligible for a lower rate based upon certain conditions precedent relating to the rates under the "Subsequent Expansion," as such term is defined in Exhibit C. The second gives Virginia Power certain priority rights to a "Subsequent Expansion" to the Virginia Southside Expansion Project to the extent that the bid in the open season for the Subsequent Expansion is at maximum rates and for no less than a 15-year term. Virginia Power would have first priority to contract for such capacity on a

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<sup>22</sup> Virginia Power is the only Anchor Shipper for the project.

pro-rata basis with other Anchor Shippers, but the guarantee of capacity proration would not apply to other Anchor Shippers if Transco oversubscribes the project. Transco states that this provision is consistent with Commission policy because it was offered to all potential shippers in the open season and will not result in any shippers receiving a different quality of service nor present any risk of undue discrimination.

33. The Commission generally evaluates whether non-conforming provisions constitute permissible deviations from pro forma service agreements when the pipeline files redline/strikeout versions of the service agreements.<sup>23</sup> On September 19, 2013, in response to a Commission staff data request, Transco submitted redline/strikeout versions of the service agreements with Virginia Power and Piedmont.

34. The Commission finds that the incorporation of non-conforming provisions, as described by Transco, in the shippers' service agreements constitutes material deviations from Transco's pro forma service agreement. However, the Commission has found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.<sup>24</sup> Here, we find that the proposed non-conforming provisions are necessary to reflect the unique circumstances involved with the project. We further find that the first two provisions are not discriminatory because they conform to Transco's tariff. Section 12 of the General Terms and Conditions (GT&C) of Transco's Tariff provides that the maximum and minimum delivery point pressures may be agreed upon by buyer and seller in the service agreement. In addition, Section 44 of the GT&C of its tariff permits Transco and a customer to mutually agree to an extension of the term of a service agreement. Moreover, we find that the refund provision does not result in Virginia Power receiving a different quality of service than other shippers. With regard to the provision pertaining to a subsequent expansion, we find that where a subsequent expansion is envisioned that will be less costly due to the anchor shipper's subscription, such capacity priority is reasonable when an anchor shipper is committing to both projects and the provision was offered to all potential shippers in the open season. We note that the Commission has approved a similar non-conforming provision specifying that guaranteed capacity proration would not apply to all anchor shippers if the pipeline oversubscribed the project.<sup>25</sup> For these reasons, we find the non-conforming

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<sup>23</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 31 (2013).

<sup>24</sup> *See, e.g., Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008); and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

<sup>25</sup> *Tennessee Gas Pipeline Co.*, 136 FERC ¶ 61,173, at PP 40, 43 (2011).

provisions identified by Transco are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.<sup>26</sup>

35. As directed below, when Transco files its non-conforming service agreements, we require it to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

36. Transco must file, no less than 60 days, and no later than 30 days, before the in-service date of the proposed facilities, an executed copy of each non-conforming agreement reflecting all non-conforming language and a tariff record identifying these agreements as non-conforming agreements, consistent with section 154.112 of our regulations.<sup>27</sup> This determination relates only to those items described by Transco in the application and not to the entire precedent agreement or the language contained in the precedent agreement.

#### **G. Environmental Analysis**

37. Commission staff began its environmental review of the Virginia Southside Expansion Project following approval for Transco to use the pre-filing process on June 1, 2012, in Docket No. PF12-15-000. On August 20, 2012, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. Commission staff held three public scoping meetings in communities near the proposed facilities to provide the public with an opportunity to learn more about the project and to comment on environmental issues.

38. We received written comments in response to the NOI and during the public scoping meetings from the U.S. Fish and Wildlife Service (USFWS), the Virginia Department of Conservation and Recreation (VDCR), the United Keetoowah Band of Cherokee Indians in Oklahoma, Mr. Glen Besa, a representative of the Sierra Club (Sierra Club), and five landowners. Four individuals provided verbal comments at the public meetings. The USFWS provided the website to obtain information on threatened

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<sup>26</sup> See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

<sup>27</sup> 18 C.F.R. § 154.112 (2013).

and endangered species that could occur in the project area and staff referenced this information in preparation of the EA. The primary issues raised during the public scoping process concerned air quality, wetland and waterbody impacts, the non-jurisdictional Brunswick County Power Station, preparation of an environmental assessment (EA) rather than an environmental impact statement (EIS), alternatives, and easement negotiation concerns.

39. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), the Commission's staff prepared an EA for the Virginia Southside Lateral Project. The EA was prepared with the cooperation of the United States Army Corps of Engineers (USACE) (Norfolk, Virginia and Wilmington, North Carolina Districts). The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, alternatives, and cumulative impacts. As summarized below, the EA also addresses all substantive comments received in response to the NOI and during the public scoping meetings.

40. The VDCR's scoping comments included recommendations that staff analyze project impacts on the whitemouth shiner, a fish, and the Difficult Creek Natural Area Preserve in Halifax County, including rare plants within the preserve. Section B.4 of the EA described project impacts on both the whitemouth shiner and the Difficult Creek Natural Area Preserve's rare plants.

41. In their scoping comments, the United Keetoowah Band of Cherokee Indians in Oklahoma did not object to the project but wished to be contacted immediately if any human or funerary items are discovered. As discussed in section B.7.b of the EA, Transco prepared a plan in the event any unanticipated historic properties, human remains, or paleontological resources are encountered during construction. Transco's plan includes the tribe as a consulting party.

42. Sierra Club raised scoping concerns about air quality, including fugitive emissions, emissions of nitrogen oxides (NOx), carbon dioxide (CO<sub>2</sub>), and greenhouse gases (GHG). Section B.8.a of the EA addresses impacts on air quality from emission of criteria pollutants and GHG from construction of the project. The EA also addresses the impact of operational emissions, which include both criteria pollutant impacts, emissions of GHG, and fugitive emissions from the compressor station. As described in the EA, the impacts would be below the National Ambient Air Quality Standards established by the U.S. Environmental Protection Agency to protect human health and welfare. The EA concludes there would be no significant impacts to air quality.

43. Sierra Club also provided comments concerning potential impacts on wetlands and waterbodies. As discussed in section B.2 of the EA, Transco would implement its Wetland and Waterbody Construction and Mitigation Procedures (Procedures), which

would minimize and mitigate the impacts resulting from construction of the project on wetlands and waterbodies. The EA found that the measures presented in the Procedures would adequately minimize impacts on wetlands and waterbodies, and concludes that the project would result in no significant impacts on these resources.

44. Sierra Club requests that the cumulative environmental impacts of the Brunswick County Power Station be included in the EA analysis. As discussed in section A.8 of the EA, the planned Brunswick County Power Station is not under the Commission's jurisdiction. The power station is under the jurisdiction of the Virginia State Corporation Commission (VSCC), which completed its review of the potential impacts of the power station and has authorized its construction and operation. Section A.8 of the EA concludes there is not sufficient justification to warrant environmental review of the power station as part of the proposed federal action. However, Section B.10 of the EA provides information about the anticipated environmental impacts of the power station, as well as other projects, as part of the cumulative impacts analysis.

45. Sierra Club states that the EA should address impacts from increased hydrofracturing (i.e. fracking) of shale formations to meet the increased demand for natural gas caused by the project. As stated in section A.3 of the EA, upstream production and gathering activities are not regulated by the Commission. These activities and facilities are overseen by the affected region's state and local agencies with jurisdiction over the management and extraction of the shale gas resource. Additionally, there are no fracking activities that are occurring in the vicinity of the project. The Council on Environmental Quality's (CEQ) regulations require agencies to consider the environmental effects of their proposed actions, including: (1) direct effects, which are caused by the action and occur at the same time and place; and (2) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.<sup>28</sup> An impact is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."<sup>29</sup> Impacts which may result from additional non-conventional gas production are not "reasonably foreseeable" impacts of Transco's proposed project, as that term is contemplated and defined by the CEQ regulations. The Virginia Southside Expansion Project does not depend on additional gas production. An overall increase in nationwide production may occur for a variety of reasons unrelated to this project, but the location, scale, and timing of such subsequent production activity is unknown and too speculative to assume, especially given that the supplies which will ultimately be delivered by this

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<sup>28</sup> 40 C.F.R. § 1508.8 (2013).

<sup>29</sup> *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

project may originate at any number points along the interconnected interstate natural gas pipeline grid.

46. Sierra Club also states that an EIS should be prepared for the project, rather than an EA. Consistent with CEQ's regulations, the Commission's policy is to prepare an EA, rather than an EIS, if our initial review indicates that a project is not likely to be a major federal action significantly affecting the quality of the human environment. If, during the course of the environmental analysis, it appears that approval of a proposal will have significant adverse impacts on the quality of the human environment, the regulations provide that we will prepare an EIS. As discussed in section A.3 of the EA, Transco's project was thoroughly analyzed, and we did not identify any significant direct or indirect impacts that would warrant further analysis in an EIS.

47. We received scoping comment letters from five affected landowners regarding pipeline reroutes on their properties. As discussed in section C.5 of the EA, H. Carrington Edmunds and Wayne and R. Page Seamster provided comments on the proposed route's deviation from the existing South Virginia Lateral "A" pipeline right-of-way between mileposts (MP) 29.4 and 31.2, which would cross their land tracts. In response to these comments, the EA analyzed an alternative that would locate the proposed pipeline adjacent to the South Virginia Lateral "A" pipeline between these mileposts. The EA concludes that co-locating the proposed pipeline with the existing Transco pipeline along this segment would impact an additional 9.3 acres of wetlands within the Kerr Management Area, administered by the USACE. As a result, the EA found this alternative route did not provide an environmental advantage over the proposed route in this location.

48. Three additional landowners, Nora T. Short, Owen Strickler, and Barbara T. Yeattes, also expressed concern about the proposed route of the Brunswick Lateral pipeline between MPs 2.1 and 4.0. Mr. Strickler requested that the proposed pipeline run along the western border of his property, and Ms. Short and Ms. Yeattes each stated they preferred the pipeline follow their property lines. Section C.5 of the EA describes the Brunswick Lateral Route Variation, which incorporates the requested route changes. The EA found that impacts on various resources would be similar; however, the variation would result in a different crossing location for the Meherrin River that would pose substantial engineering constraints due to steep topography. The EA concludes that the Brunswick Lateral Route Variation would not provide any significant environmental advantage over the proposed route.

49. Four individuals spoke at the scoping meetings held in the project area. They raised concerns regarding easements, compensation, the ability to sell properties after the pipeline is constructed, and the potential for impacts to occur on properties adjacent to the proposed right-of-way. Section A.3 of the EA states that the Commission does not play a role in either negotiation or adjudication of easement compensation. Transco and

each landowner can negotiate right-of-way easements and compensation, and the landowners may also negotiate with Transco for the loss of certain uses of land during and after construction, loss of any other resources, and any damage to property.

50. Section B.1.b of the EA describes Transco's Soil Erosion and Sediment Control (SESC) Plan which would control, minimize, and mitigate all construction related sediment runoff to within the approved construction work area. The EA found that the measures presented in the SESC Plan would avoid or adequately minimize impacts on adjacent landowners.

51. The EA was issued for a 30-day comment period and placed into the public record on July 13, 2013. The Commission received comments on the EA from one affected landowner, the VDCR, the U.S. Environmental Protection Agency (USEPA), Sierra Club, and the Clean Air Council.

52. The landowner, Mr. Edmunds, restates his opposition to the proposed route and requests that the pipeline follow the existing South Virginia Lateral "A" pipeline corridor to avoid tree clearing on his property. As described above, section C.5 of the EA concludes that the proposed route across Mr. Edmunds land would avoid impacts on 9.3 acres of wetlands in the Kerr Management Area. For this reason, the EA concludes that an alternative alignment immediately adjacent to Transco's existing South Virginia Lateral "A" pipeline does not offer a significant environmental advantage. Following construction, Transco will restore Mr. Edmunds' property to pre-construction condition and trees can be replanted, except within the permanent easement.

53. Mr. Edmunds also opposes the use of his property for "Temporary Work Space #3" for the directional drill of the Banister River. The alignment sheets filed with Transco's application did not identify Mr. Edmunds' property as being affected by the workspace for directional drill. However after the issuance of the EA, Transco filed a statement indicating that Mr. Edmunds' property would be affected. Transco further stated that although its alignment sheets incorrectly depicted the location of the workspace, the environmental information in its application, including survey data, were correct. Therefore, the analysis in the EA is accurate. The EA finds that the plan for the crossing of the Banister River, including the workspace on Mr. Edmunds' property, is acceptable. Transco will compensate Mr. Edmunds for use of the workspace, and will follow the measures in the SESC Plan to adequately minimize impacts and restore the workspace following construction. Transco will correct the mapping error in its detailed construction alignments sheets filed prior to construction, as required by environmental condition 4 to this Order.

54. VDCR's comments included additional details about concerns that were initially raised in its scoping comments, including the known locations of the whitemouth shiner. Section B.4 of the EA describes the potential occurrence of this species in the project area

(Butcher Creek and Allen Creek crossings), and Transco's proposed mitigation to minimize impacts on this species. Further, Transco will coordinate with the Virginia Department of Game and Inland Fisheries and VDCR on proposed construction and mitigation for Allen Creek tributaries. Based on implementation of the proposed mitigation measures, the EA concludes that the project would not cause a trend toward federal listing for this state listed species.

55. VDCR also states that at Reedy Creek, Transco should use the same avoidance and minimization protocols for the green floater and Atlantic pigtoe mussels proposed for other locations, including surveys and relocation. As stated in section B.4 of the EA, Transco has committed to conduct surveys and implement these avoidance and minimization protocols for Reedy Creek, consistent with VDCR's recommendation.

56. VDCR requests copies of harperella and smooth coneflower surveys upon their completion. We have modified Environmental Condition 16 to require Transco to provide copies of these survey results to VDCR.

57. VDCR states that the Difficult Creek Natural Area Preserve (Preserve) contains two significant natural communities, the Southern Piedmont Hardpan Forest and Piedmont Prairie. These communities contain rare species of Carolina thistle, rattlesnake master, American ipecac, and ringed panic grass within the project area. Additionally, VDCR comments that invasive or noxious persistent populations of spotted knapweed, *Sericea lespedeza*, and tree of heaven occur within or near the project area. Section B.3.a of the EA states that Transco would monitor for and manage any invasive species for at least two years following project completion on VDCR-managed lands including the Preserve. In addition, section B.5.c of the EA states that Transco would utilize its existing South Virginia Lateral "A" pipeline right-of-way to the maximum extent practicable through the Preserve. We agree with the EA's conclusion that these measures would adequately minimize impacts on the Preserve.

58. VDCR comments that Transco's weed wash stations should be outside of the Preserve to minimize noxious weeds and invasive species from entering the Preserve. Section 3.a of the EA states that Transco would place wash stations at the entrance and exits of the preserve. Transco has also committed to not allow project-specific vehicle wash stations to be established within management areas. Further, VDCR recommends several site-specific items for its managed property (seed mixes, silt fence and signage locations, segregation of topsoil, and video cameras on access roads) that should be resolved during the easement negotiation process. Section B.3.a of the EA states that Transco has committed to seeding disturbed areas with mixes recommended by VDCR, landowners, or land management agencies. We believe Transco's proposed measures should satisfy VDCR's easement recommendations.

59. VDCR expresses support of the alternative route described in section C.4.a of the EA, which would avoid the Preserve and associated natural heritage resources. However, VDCR recommends that Transco coordinate with VDCR if the proposed route is approved. Section C.4.a of the EA concludes that the proposed route would be environmentally preferable to the alternative, as it will affect fewer residences. As described above and in section B.3 of the EA, Transco will coordinate with VDCR in regard to its crossing of the Preserve.

60. The USEPA recommends that the EA's cumulative impacts discussion address water quality in the watershed, quantify the cumulative impacts, and describe whether water quality standards would be exceeded. As stated in section B.10 of the EA, most of the projects included in the cumulative impacts analysis are located within the same watershed that would be crossed by Transco's proposed pipelines, and some of these projects would likely have direct and indirect impacts on waterbodies and wetlands. As stated above, and as described in section B.2 of the EA, waterbody and wetlands effects from the construction and operation of the proposed pipeline facilities will be relatively minor and will be minimized by Transco's implementation of its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Transco's Procedures, as well as the environmental conditions attached to this order. Additionally, Transco's use of dry open-cut waterbody crossings or HDDs for all flowing streams and compliance with its Section 401 water quality permits for crossing perennial streams would ensure the project meets water quality standards. All other major projects in the region of influence, including the Virginia Southside Expansion Project, would be required to obtain water use and discharge permits and would implement plans similar to Transco's Plan and Procedures and as mandated by federal and state agencies. Specific quantitative data for other projects in the area were unattainable. Further, we do not anticipate any long-term or permanent impacts on waterbodies from construction of the project. Thus, the EA concludes that cumulative impacts on water resources including water quality would not be significant.

61. The USEPA requests that Transco's Plan and Procedures be included as appendices to the EA and that Transco revise its Plan and Procedures to be consistent with the Commission's recently revised 2013 Plan and Procedures. To facilitate the ease of locating Transco's Plan and Procedures, the EA included footnotes with the link to the Commission's e-library, as well as the Docket and Accession Numbers. We agree that Transco's Plan and Procedures should be consistent with the Commission's updated Plan and Procedures and have modified Environmental Condition 11 accordingly.

62. Sierra Club and the USEPA state that the EA fails to consider climate change impacts for the project and the Brunswick County Power Station. In fact, the EA did consider and address the potential for climate change impacts. Section B.8.a of the EA quantifies the fugitive air emissions resulting from operation of Transco's Compressor Station 166 and Section B.10 discusses climate change as it relates to the proposed

project. The EA states that the project's incremental addition to impacts of climate change on the environment would be relatively small. The volume of GHG that would be emitted from the project is well below the 25,000 tons that the Council on Environmental Quality indicated is presumed to be below the level of regulatory concern for federal NEPA review. Regarding the Brunswick County Power Station, the EA concludes that the replacement of the two existing coal-fired electric generation facilities with the gas-fired Brunswick County Power Station will result in a net reduction of carbon dioxide equivalents.<sup>30</sup>

63. The USEPA states that the EA fails to quantify the total fugitive methane emissions from the pipeline. Fugitive methane emissions are typically estimated as part of the operating emissions for projects that include compressor stations. The EA quantifies fugitive emissions of Compressor Station 166 in section B.8. The project will add 98 miles of new pipeline; however, leakage from new segments of pipeline is not a significant source of methane emissions. Moreover, before the gas to be transported on the project facilities reaches them, it may travel through many interconnected pipelines from various upstream production areas. We cannot determine where the gas will come from or how far it will travel before going through the proposed 98 miles of pipeline. Current estimates of leakage from pipelines vary widely and there is no standard methodology to estimate leaks from segments of pipelines. Accordingly, we cannot predict the amount of methane leakage associated with transportation along a specific pipeline segment. We note that Transco has been a partner with the USEPA in the Natural Gas STAR Program since 1999. This voluntary program involves the partners identifying several key measures they would undertake to reduce fugitive emissions from pipeline systems.

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<sup>30</sup> With regard to the EA's conclusion about replacement of the coal-fired facilities, the Clean Air Council references a study that questions the conventional assumption that life cycle GHG emissions are lower from natural gas than from coal. More specifically this study appears to find that life cycle GHG emissions from natural gas produced using hydraulic fracturing (i.e., "fracking") are equivalent to the coal life cycle GHG emissions. Rather than refuting the EA's conclusion, we believe this supports the conclusion that there would be no significant cumulative climate change impacts due to the project because even assuming *arguendo* that all Brunswick County Power Station emissions were to come from gas produced by fracking, the total GHG emissions after the replacement would essentially be unchanged.

64. The USEPA and the Clean Air Council request that we conduct a detailed air quality analysis that includes the non-jurisdictional Brunswick County Power Station. As stated in section A.8 of the EA, the Virginia Department of Environmental Quality (VDEQ) required modeling of cumulative air impacts as part of the Power Station application for the Prevention of Significant Deterioration (PSD) air permit, and that the modeling showed that the Power Station would comply with all applicable standards. The EA further states that based on the prevailing winds and the 90-mile separation between the Power Station and Transco's Compressor Stations 165 and 166, the potential for cumulative air impacts would not be significant. We note that regulation of the air emissions associated with the power station is the responsibility of the USEPA and VDEQ. On March 12, 2013 the VDEQ issued a Prevention of Significant Deterioration (PSD) air permit for the Brunswick County Power Station. The permit includes emission testing requirements, Best Available Control Technology (BACT) for criteria pollutants and other operational emission controls. As a result, we find no need for further air analyses.

65. The USEPA and the Clean Air Council request clarification of the permit requirements for Compressor Station 166. As stated in section B.8.a of the EA, Transco will apply to VDEQ for a combined permit for both Compressor Station 166 and the adjacent Compressor Station 165, following authorization for the proposed project. VDEQ has indicated that the emissions would be combined for purposes of New Source Review permitting and the combined major source facility would obtain a minor PSD permit from the VDEQ.

66. The Clean Air Council questions the adequacy of Transco's modeling for Compressor Station 166, which was the basis for the EA analysis. Under NEPA, we are required to do the best analysis practicable. Transco performed air emission modeling with various assumptions because the final design of the facility was not completed. Transco's assumptions considered worse-case scenarios. Table B-16 of the EA includes the results of the modeling, which showed that emission levels are estimated to be very low in comparison to the NAAQS. Environmental condition 1 requires that Transco construct the facility, as identified in the application and analyzed in the EA. Additional authorization would be required for any significant change in turbines, engines, or other emission generating equipment.

67. Sierra Club states that the Commission should prepare an EIS because the EA did not adequately address a number of major factors such as the emissions of GHG, fugitive emissions, and the effect on climate. Sierra Club raised similar comments during the public scoping process, and as discussed previously, we believe these issues were sufficiently addressed. Transco's project was thoroughly analyzed in the EA, and no significant direct or indirect impacts were identified. Based on the pipeline routing, where Transco has aligned the pipeline adjacent to its existing right-of-way for most of this length, and the mitigation both proposed by Transco and recommended in the EA,

the EA rightly concludes that approval of project would not result in a major federal action significantly affecting the quality of the human environment. We affirm the EA's finding and reject Sierra Club's assertion that an EIS is required.

68. Sierra Club also states that an EIS should be prepared because the Hearing Examiner in VSCC's docket for the Brunswick County Power Station has recommended that the state-issued Certificate of Public Convenience and Necessity be denied. Sierra Club states that since the pipeline is proposed principally to provide fuel to the power station, the impacts are not justified because the project is not needed. The USEPA questions the need for the project if the power station is not constructed. On August 2, 2013, VSCC approved construction of the Brunswick County Power Station. Further, VEPCO has received the necessary conditional use permits from the Brunswick County Board of Supervisors to build the station and has applied to the VDEQ for the air permit. Moreover, the purpose of the project is not solely linked to the Brunswick County Power Station, since the proposed project would also transport natural gas to Piedmont's Pleasant Hill Meter Station in Northampton County, North Carolina.

69. Sierra Club further states that the EA fails to consider impacts of fracking, on climate change and water supplies. As discussed above and in section A.3 of the EA, production and gathering activities and the pipelines and facilities used for drilling of natural gas are not regulated by this Commission. These facilities and actions are overseen by the affected regions' state and local agencies. The general use of fracking to produce natural gas is neither causally-related to the project nor reasonably foreseeable as contemplated by CEQ regulations because the exact location, scale, and timing of such activities are unknown; thus, as the EA concludes, these activities are outside the scope of the EA.<sup>31</sup>

70. When looking at project impacts, the Supreme Court held in *U.S. Dep't of Transp. v. Public Citizen (Public Citizen)*,<sup>32</sup> that NEPA requires a "reasonably close causal

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<sup>31</sup> The Commission has recently issued several orders discussing whether activities are "reasonably foreseeable" and "causally related" for purposes of consideration in a cumulative impact analysis. *See, e.g., Central New York Oil and Gas Company, LLC*, 137 FERC ¶ 61,121 (2011), *order on reh'g*, 138 FERC ¶ 61,104 (2012), *aff'd, Coalition for Responsible Growth and Resource Conservation v. FERC*, 485 Fed. Appx. 472 (2nd Cir. June 12, 2012); *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043 (2012).

<sup>32</sup> 541 U.S. 752, 767 (2004).

relationship” between the environmental effect and the alleged cause.<sup>33</sup> The Court further explained that this is similar to “the familiar doctrine of proximate cause from tort law.”<sup>34</sup> In *Public Citizen*, the Court upheld the Federal Motor Carrier Safety Administration’s (FMCSA) decision not to consider the potential environmental impacts of an increased number of Mexican trucks on U.S. roads in its EA assessing new safety regulations governing Mexican motor carriers. The Court based its decision upon the agency’s finding that the relationship between the increased number of trucks and the safety regulations was not a reasonably close causal relationship.<sup>35</sup> Similarly, there is not a reasonably close causal relationship between the general use of fracking and our approval of the Virginia Southside Expansion Project.

71. The Clean Air Council also questioned Transco’s feasibility assessment for the use of electric motor-driven compression and the decision by Transco not to use Selective Catalytic Reduction to reduce nitrogen oxides emissions. Section C.6 of the EA concludes that the use of electric motor-driven compressors would not provide an environmental or operational advantage over the proposed design because of reliability concerns over electric power supply to the compressor station. As for the use of Selective Catalytic Reduction, Transco has agreed to use SoLoNOx® controls on the gas-fired turbines. Modeling results showed the NAAQS are not exceeded with the currently proposed emission mitigation, and the project area near the compressor station is not subject to stricter ozone precursor control.

72. The Clean Air Council requests that the Commission impose additional emission controls on the existing facilities at Compressor Station 165. The existing Compressor Station 165 is neither part of the Virginia Southside Expansion Project, nor the subject of any pending proceeding at the Commission. Further, the station is currently in compliance with existing Commission authorizations and associated environmental conditions. As stated previously, emissions from Compressor Station 165 will be considered as part of the VDEQ permit review of Compressor Station 166. Consequently, VDEQ has the authority to require additional controls on either Compressor Station 165 or 166, if it determines it necessary.

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<sup>33</sup> *Public Citizen*, 541 U.S. at 767 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

73. The Clean Air Council requests that the Commission perform a health impact assessment for the emissions from the project. Table B-16 in section B.8.1 of the EA describes the air quality impacts from emissions of criteria pollutants from Compressor Station 166. The emissions were compared to the NAAQS, which were developed to provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. The emission impacts from the compressor station were much lower than the NAAQS. Section B.8.a of the EA concludes that there would be no significant impacts on air quality and we believe there would be no impacts on public health from operation of Compressor Station 166.

74. The Commission has reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effects of Transco's project. Based on our consideration of this information, the Commission agrees with the conclusions presented in the EA and finds that if constructed and operated in accordance with Transco's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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 or operation of facilities approved by this Commission.<sup>36</sup>

76. At a hearing held on November 21, 2013, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

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<sup>36</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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992); *Dominion Transmission Inc.*, 141 FERC ¶ 61,240, at P 68 (2012) (finding "state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission.").

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Transco to construct and operate the Virginia Southside Expansion Project, as described and conditioned herein, and as more fully described in the application.

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

(1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions in Appendix B to this order;

(4) executing, prior to the commencement of construction, firm contracts for the volumes and service terms equivalent to those in its precedent agreements; and

(5) calculating the maximum initial recourse reservation charge to reflect the depreciation and negative salvage rates approved in any order on the Settlement issued in Docket No. RP12-993-000, and filing the revised rates no earlier than 60 days, and no later than 30 days, prior to the proposed facilities going into service.

(C) Transco's incremental recourse rate for transportation service under Rate Schedule FT is approved, subject to Transco making a compliance filing to include a maximum incremental recourse rate which reflects the depreciation and negative salvage rates set forth in the Settlement in Docket No. RP12-993-000, as more fully discussed above.

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

(E) The requests for clarification of rolled-in rate treatment for the costs of future expansions are denied, as more fully described above.

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

(G) Transco shall file an executed copy of each agreement reflecting the non-conforming language and a tariff record identifying these agreements as non-conforming agreements no earlier than 60 days, and no later than 30 days, prior to the proposed facilities going into service.

(H) The untimely motion to intervene filed by PSEG Energy Resources & Trade, LLC is granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

Calpine Energy Services, L.P.  
Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (jointly)  
Exelon Corporation  
Municipal Gas Authority of Georgia  
National Fuel Gas Distribution Corporation  
National Grid Gas Delivery Companies  
New Jersey Natural Gas Company  
NJR Energy Services Company  
North Carolina Utilities Commission  
Piedmont Natural Gas Company, Inc.  
Seamster, R. Page and Wayne T.  
Transco Municipal Group

## Appendix B

### Transcontinental Gas Pipe Line Company, LLC Docket No. CP13-30-000 Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Transco must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transco's exercise of eminent domain authority granted under NGA Section 7(h) in any condemnation proceedings related to the 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 pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Transco's Virginia Southside Expansion Project *Upland Erosion Control, Revegetation, and Maintenance Plan (Plan)*, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Transco will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - f. the company personnel and specific portion of Transco's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco's efforts to obtain the necessary federal authorizations;

- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Transco must receive written authorization from the Director of OEP **before placing 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 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. **Prior to construction**, Transco shall file with the Secretary revised versions of its Plan and its Wetland and Waterbody Construction and Mitigation Procedures (Procedures) demonstrating consistency with the Commission's 2013 versions of

the Plan and Procedures, particularly regarding section VII.A.5 of the Plan and section VI.A.3 of the Procedures.

12. **Prior to construction**, Transco shall file with the Secretary for review and written approval by the Director of OEP mitigation measures for the 43 waterbodies identified within the construction right-of-way that are not crossed by the pipeline centerlines (footnoted in Appendix F of the EA). Measures shall show alternative crossing methods or route re-alignments which avoid or minimize impacts on these waterbodies.
13. Transco shall include the U.S. Army Corps of Engineers-approved wetland and waterbody boundaries on its revised alignments sheets **to be provided with the Implementation Plan (as required by condition 4 above)**.
14. **Prior to construction**, Transco shall either use the existing South Virginia Lateral A right-of-way for installation of water withdrawal equipment at each of the horizontal directional drill locations or obtain water from municipal sources.
15. **Prior to construction**, Transco shall file with the Secretary for review and approval by the Director of OEP an engineering and environmental feasibility study for the use of the horizontal directional drill construction method at each the three Meherrin River crossings (South Virginia Lateral B milepost 80.5 and 84.5 and Brunswick Lateral milepost 3.0).
16. **Prior to construction**, Transco shall file with the Secretary the results of its consultation with the USFWS regarding the appropriate survey protocols and/or mitigation for harperella and smooth coneflower. Transco shall also include the results of any required surveys and/or mitigation measures, as applicable. Transco shall also provide copies of the harperella and smooth coneflower survey results to the VDCR.
17. **Transco shall not begin** construction of the project facilities **until**:
  - a. the staff completes any necessary consultations with the USFWS; and
  - b. Transco has received written notification from the Director of OEP that construction and/or use of mitigation may begin.
18. Transco shall consult with the Virginia Department of Game and Inland Fisheries to determine appropriate mussel survey protocols for the Atlantic pigtoe mussel at the crossings of Taylors Creek (South Virginia Lateral B mileposts 72.7, 72.8, and 74.6). Results of these consultations and any resulting surveys or proposed mitigation measures shall be filed with the Secretary **prior to construction**.

19. Transco shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until:**

- a. Transco files with the Secretary the remaining cultural resources surveys and evaluation reports, any necessary treatment plans, and the Virginia State Historic Preservation Office's comments on the reports and plans;
- b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. Commission staff reviews and the Director of the OEP approves all cultural resources reports and plans, and notifies Transco in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All materials 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.**"

20. Transco shall file a noise survey for Compressor Station 166 **no later than 60 days after placing the station into service.** If a full load condition noise survey is not possible, Transco shall provide an interim survey at maximum possible horsepower load and provide the full load survey **within 6 months.** If the noise attributable to the operation of the station under interim or full horsepower load conditions exceeds a day-night sound level (Ldn) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive areas (NSAs), Transco shall install additional noise controls to meet that level **within one year** of the in-service date. Transco shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.

21. Transco shall file a noise survey for the Pressure Regulating Station at South Virginia Lateral B milepost 9.0 in Brunswick County, Virginia **no later than 60 days after placing the station into service.** If the noise attributable to the operation of the station under maximum flow conditions exceeds an Ldn of 55 dBA at any nearby NSAs, Transco shall install additional noise controls to meet that level **within one year** of the in-service date. Transco shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.