153 FERC ¶ 61,311
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Texas Eastern Transmission, LP Docket No. CP15-90-000

ORDER ISSUING CERTIFICATE

(Issued December 17, 2015)

1. On February 19, 2015, Texas Eastern Transmission, LP (Texas Eastern) filed an application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] for certificate authorization to construct and operate a new compressor station in Provident City, Lavaca County, Texas, a new compressor unit at an existing compressor station in St. Landry Parish, Louisiana, and modifications to existing facilities in Kentucky, Louisiana, Mississippi, Ohio, and Tennessee. The proposed facilities, collectively known as the Gulf Markets Expansion Project (Gulf Markets Project), will create incremental pipeline capacity that will enable Texas Eastern to provide approximately 650,000 dekatherms (Dth) per day of additional firm transportation service on its mainline system.

2. For the reasons discussed below, the Commission will grant the requested certificate authorization, subject to conditions described herein.

I. Background and Proposal

3. Texas Eastern is a limited partnership organized and existing under the laws of the State of Delaware, engaging primarily in the transmission of natural gas in interstate commerce, subject to the Commission's jurisdiction. Texas Eastern is a natural gas company as defined under section 2(6) of the NGA.[3] Texas Eastern's transmission system extends from Texas, Louisiana, and the Gulf of Mexico area, through the States of Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio,

[1] 15 U.S.C. § 717(f) (2012).

[2] 18 C.F.R. pt. 157 (2015).

[3] 15 U.S.C. § 717a(6) (2012).

Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

4. Texas Eastern proposes to construct and operate the Gulf Markets Project to provide 650,000 Dth per day of new firm natural gas transportation service on its mainline system. The Gulf Markets Project is designed to increase Texas Eastern's capability to flow gas in a southerly direction from Market Zone 2[4] to Market Zone 1[5] and Access Zone WLA,[6] and in the traditional northerly direction from Access Zone STX[7] to Access Zone WLA. The project will include construction of the following:

- a new 5,280 horsepower (hp) compressor station at Provident City in Lavaca County, Texas;
- the installation of a new 12,500 hp compressor unit and other facility modifications at the existing Opelousas Compressor Station in St. Landry Parish, Louisiana;
- facility modifications at five other existing compressor stations along the project path; and

[4] Market Zone 2 includes Texas Eastern's pipeline facilities from the Illinois-Indiana state line to immediately west of its Delmont, Pennsylvania compressor station, and the pipeline facilities from the Tennessee-Kentucky state line to the facilities immediately west of its compressor station at Rockwood, Pennsylvania. Texas Eastern Transmission, LP, FERC Gas Tariff, Eighth Revised Volume No. 1, at 8 (2015).

[5] Market Zone 1 includes Texas Eastern's pipeline facilities immediately north of its Little Rock, Arkansas compressor station to the Illinois-Indiana state line, and its pipeline facilities from immediately north of its interconnect with Texas Gas Transmission, LLC (Texas Gas) at Texas Eastern's Kosciusko, Mississippi compressor station to the Tennessee-Kentucky state line. *Id.*

[6] Access Zone WLA includes those facilities immediately east of and including the Vidor, Texas compressor station, to the facilities immediately west of the Opelousas, Louisiana compressor station. *Id.* at 7.

[7] Access Zone STX includes those facilities south of but not including the Huntsville, Texas compressor station, and those facilities west of but not including the Vidor, Texas Compressor station. *Id.*

- modifications of two existing metering and regulating (M&R) stations and five existing launchers.

Texas Eastern estimates its proposed project will cost approximately $149 million.

5. Texas Eastern held a non-binding open season from June 28 through July 19, 2013, for firm service using the incremental mainline capacity that will be created by the project. Texas Eastern held a supplemental open season (limited to the shippers that participated in the first open season) from February 24 through March 7, 2014, to solicit bids for the remaining project capacity from Access Zone STX to Access Zone WLA. Texas Eastern executed binding precedent agreements with five shippers for a total of 650,000 Dth per day of additional firm service.

6. Texas Eastern proposes two phases of construction. The first phase of the project is planned to be placed in service by November 1, 2016. The Phase 1 construction and facilities include:

i. the modification of station piping at the Wheelersburg Compressor Station in Scioto County, Ohio, in Market Zone 2, to allow for bi-directional compression on six existing 2,500 hp compressor units;

ii. the modification of station piping at the Owingsville Compressor Station in Bath County, Kentucky, in Market Zone 2; the Egypt Compressor Station in Monroe County, Missouri, in Market Zone 1; the Mt. Pleasant Compressor Station in Giles County, Tennessee, in Market Zone 1; and the Opelousas Compressor Station in St. Landry Parish, Louisiana, dividing Access Zone ELA (Zone ELA)[8] and Access Zone WLA to allow for bi-directional compression;

iii. the modification of existing launchers and receivers at milepost 231.16, south of the Union Church Compressor Station in Jefferson County, Mississippi, in Zone ELA, to allow for bi-directional in-line inspection; and

iv. the modification of two existing M&R locations in Lottie and New Roads, Pointe Coupee Parish, Louisiana (M&R 71287 and M&R 71424, respectively).

[8] Zone ELA includes Texas Eastern's pipeline facilities from immediately east of its Opelousas, Louisiana compressor station, to its pipeline facilities immediately south of the Texas Gas interconnect at Texas Eastern's Kosciusko, Mississippi compressor station. Texas Eastern Transmission, LP, FERC Gas Tariff, Eighth Revised Volume No. 1, at 8.

7. The second phase of the project is planned to be completed by August 1, 2017. Phase 2 construction and facilities include:

i. the modification of station piping at the Gillis Compressor Station in Beauregard Parish, Louisiana, in Zone WLA, to allow for bi-directional compression;

ii. the modification of existing launcher and receiver facilities at the Gillis Compressor Station to allow for bi-directional in-line inspection;

iii. the modification of station piping at the existing Opelousas Compressor Station in Zone ELA to allow for bi-directional compression, and the installation of an additional 12,500 hp electric-driven compressor unit at the Opelousas Compressor Station; and

iv. the installation of a new 5,280 hp compressor unit at the new Provident City Compressor Station in Access Zone STX.

8. Texas Eastern proposes to use its existing Rate Schedule FT-1 system rate as the initial recourse rate for services using the incremental capacity to be created by the project facilities. However, four shippers that have signed precedent agreements for project service will receive service at discount rates, and one shipper has elected to pay a negotiated rate. Texas Eastern seeks a predetermination to support a presumption that it will be allowed to roll the project's costs into its generally applicable system rates in a future NGA general section 4 rate case.

II. <u>Notice, Interventions, and Protests</u>

9. Notice of Texas Eastern's application was published in the *Federal Register* on March 13, 2015 (80 Fed. Reg. 13,365). The parties listed in Appendix A filed timely, unopposed motions to intervene in response to Texas Eastern's Application. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[9]

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[9] 18 C.F.R. § 385.214(c) (2015).

10. National Grid Gas Delivery Companies and The Municipal Defense Group[10] filed late, unopposed motions to intervene. We find that the late intervenors have demonstrated an interest in the proceeding and that granting intervention at this stage will not cause undue delay or disruption, or otherwise prejudice the applicant or other parties. Accordingly, we grant the motions for late intervention.

11. Indicated Shippers[11] filed comments relating to Texas Eastern's accounting for the proposed project's costs and request for a finding supporting a presumption of rolled-in rate treatment for the project's costs. Texas Eastern filed an answer to Indicated Shippers' comments. The comments and Texas Eastern's answer are addressed in the relevant sections below.[12]

III. Discussion

12. Since Texas Eastern's 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.[13]

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[10] The Municipal Defense Group consists of the following entities: Borough of Chambersburg, Pennsylvania; Batesville, Indiana; Cairo Public Utility Company; Gloster, Mississippi; Harrisburg, Arkansas; Horton Highway Utility District, Tennessee; Lawrenceburg, Tennessee; Loretto, Tennessee; Middleborough, Massachusetts, Municipal Gas and Electric Department; Norwich, Connecticut, Department of Public Utilities; Smyrna, Tennessee; and Utica, Mississippi.

[11] In this proceeding, the *ad hoc* Indicated Shippers' group includes: ConocoPhillips Company, Direct Energy Business Marketing, LLC, Exxon Mobil Gas & Power Marketing Company, Shell Energy North America (U.S.), L.P., and SWEPI LP.

[12] Although Rule 213 prohibits answers to protests and answers to answers, it permits answers to comments and other types of pleading not specifically prohibited. 18 C.F.R. § 385.213(a)(3) (2015).

[13] 15 U.S.C. §§ 717f(c), (e) (2012).

A. <u>Certificate Policy Statement</u>

13. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[14] 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, 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.

14. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline 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, identify any adverse impacts the applicant's proposal might have on other existing pipelines in the market and their captive customers, and consider whether the applicant's proposal would result in the unnecessary exercise of eminent domain or have other adverse economic impacts on landowners and communities affected by the route of the new facilities. 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 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. Texas Eastern proposes to use its existing system rates as the initial recourse rates for services utilizing the new incremental capacity created by the proposed facilities. Texas Eastern also proposes to charge expansion shippers its currently effective system fuel retention percentages and apply its existing Electric Power Costs (EPC) tracker mechanism. As discussed below, the revenues from Texas Eastern's discounted and negotiated rate agreements for services

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[14] *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).

using the expansion capacity are projected to exceed the cost of service associated with the project facilities and expansion capacity; thus, we find Texas Eastern's shippers will not subsidize the expansion. In addition, as discussed below, we are requiring Texas Eastern to file incremental fuel reimbursement percentages and EPC costs prior to the in-service date for the incremental capacity in order to ensure that the expansion shipper's appropriate share of these costs is not subsidized by current shippers using Texas Eastern's existing capacity.

16. In view of the above considerations, we find that Texas Eastern has satisfied the Certificate Policy Statement's threshold criterion that existing customers will not subsidize the project. We also find that the project and expansion services will not result in degradation of existing shippers' current services.

17. In addition, Texas Eastern's proposed project is designed to meet new demand, and there is no evidence that service on any other pipelines will be displaced. No pipeline companies or their customers have objected to the project or expressed any concerns that their services could be adversely affected by Texas Eastern's proposal.

18. We also find that the Gulf Markets Project will have minimal impacts on landowners and surrounding communities. Texas Eastern states in its application that, with the exception of the new Provident City Compressor Station to be located in Provident City, Lavaca County, Texas, and a temporary wareyard adjacent to the existing Wheelersburg Compressor Station in Scioto County, Ohio, all project facilities will be constructed and installed within the existing footprints of its existing compressor stations or on other land already owned by Texas Eastern.[15]

19. The Gulf Markets Project will enable Texas Eastern to provide 650,000 Dth per day of firm transportation service to five shippers that have signed precedent agreements for long-term service. Based on the benefits the project will provide, the minimal adverse impacts on Texas Eastern's existing customers and other pipelines and their captive customers, and the minimal impacts on landowners and surrounding communities, the Commission finds, 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 Texas Eastern's proposal, as conditioned in this order. Consistent with Commission policy, we will require Texas Eastern to execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements prior to commencing construction.[16]

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[15] Texas Eastern Application at 11.

[16] *See, e.g., Eastern Shore Natural Gas Company*, 142 FERC ¶ 61,124 at P 32 and Ordering Paragraph (B)(4) (2013).

B. Rates

1. Initial Recourse Rates

20. Texas Eastern proposes to use its currently effective Rate Schedule FT-1 firm transportation rates as the initial recourse rates for services using capacity created by the Gulf Markets Project. Texas Eastern calculated an estimated incremental monthly firm reservation rate for the project of $5.713 per Dth.[17] It determined this rate by dividing the total estimated Year 1 cost of service of $44,559,036 by the project design billing determinants of 7,800,000 Dth. Texas Eastern then developed a weighted average system rate based on its current reservation rates for the various flow paths for which additional capacity will be created by the Gulf Markets Project.

21. In its May 26, 2015 Response to Data Request, Texas Eastern calculated a weighted average system FT-1 recourse reservation rate for the affected flow paths of $8.395 per Dth, based on the following rates then in effect: $10.523 per Dth for the Market Zone 2-Access Zone WLA flow path; $7.914 per Dth for the Market Zone 2-Market Zone 1 flow path; $6.834 per Dth for the Market Zone 1-Access Zone WLA flow path; and $5.672 per Dth for the Access Zone STX-Access Zone WLA flow path.[18] The Commission has previously found that it is appropriate for a pipeline company to charge the existing system rate for expansion service when a calculated incremental rate is less than the existing system rate.[19] Because Texas Eastern's estimated incremental rate of $5.713 is less than its calculated weighted average system rate, we will approve the use of Texas Eastern's currently effective Rate Schedule FT-1 firm transportation rates as the initial recourse rates for service utilizing new capacity created by the Gulf Markets Project.

[17] Texas Eastern May 26, 2015 Response to May 13, 2015 Data Request, Attachment 1.

[18] *Id.* Two of the rates in Texas Eastern's calculation were subsequently slightly reduced, but this will not affect our initial recourse rate determination.

[19] *See, e.g., Questar Pipeline Co.,* 142 FERC ¶ 62,207 (2013); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137 (2013); *Tennessee Gas Pipeline Co., L.L.C.,* 140 FERC ¶ 61,120 (2012); and *Columbia Gas Transmission, LLC*, 138 FERC ¶ 61,205 (2012).

22. Texas Eastern's application does not address recourse rates for interruptible service using capacity attributable to the Gulf Markets Project capacity. Consistent with Commission policy, Texas Eastern should use its system interruptible transportation rates.[20]

2. **Fuel Reimbursement and Electric Power Costs**

23. Texas Eastern proposes to charge expansion shippers its currently-effective system fuel retention percentages and its currently effective system EPC costs for services using the capacity created by the Gulf Markets Project.

24. Texas Eastern calculates its incremental fuel costs attributable to operation of the expansion capacity will be $17,686,988 for Year 1 of the project, based on an incremental shrinkage factor of 3.55 percent and a natural gas price of $3.00 per Dth.[21] Texas Eastern estimates that charges paid by the expansion shippers based on its currently-effective system fuel retention percentages will recover $15,045,118 during Year 1 that the project facilities are in service.[22] Texas Eastern also states in its June 5, 2015 Data Response that it recovers part of its fuel costs through its usage charge, but does not specify how much fuel costs it expects to recover through these charges for Year 1 of the project.

25. Texas Eastern calculates its EPC associated with operation of the proposed additional compression and other project facilities will be $39,818 per day, or $14,533,570 per year. Texas Eastern does not provide an estimate of the EPC revenues it would collect through its EPC tracker mechanism after the project is in service. Texas Eastern states that it recovers EPC costs in its usage and demand charges, but again does not specify the amount of EPC costs it estimates to recover through these charges for Year 1 of the project.

26. In its June 5, 2015 Data Response, Texas Eastern asserts that for any analysis of the project rates, the Commission should not look at fuel and EPC costs in isolation, but instead should include project transportation costs and billing determinants in its analysis. Texas Eastern states that failure to consider the overall reduction in costs of all categories

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[20] *See, e.g.*, *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015).

[21] Texas Eastern June 5, 2015 Response to May 13, 2015 Data Request, Attachment 3.

[22] *Id.*

may result in adverse policy implications because it could provide an incentive for an economically inefficient project design that would have additional environmental impacts.

27. Texas Eastern's estimated fuel and EPC costs associated with the Gulf Markets Project's capacity ($17,686,988 plus $14,533,570, respectively) exceed its estimated fuel and EPC revenues from the expansion shippers ($15,045,118 per year). Further, although Texas Eastern indicates that it recovers part of its fuel costs through its usage charge, it has not stated how much fuel costs the usage charge would recover from expansion shippers during Year 1 that the project facilities are in service. Thus, the record does not support a finding that expansion services would not be subsidized by existing shippers if we granted Texas Eastern's request to apply its currently effective system fuel retention percentages and EPC costs to services using the proposed incremental capacity.

28. In view of the above, we will require Texas Eastern to file incremental fuel reimbursement percentages and EPC costs with the Commission at least 30 days, but not more than 60 days, prior to the in-service date for the expansion facilities in order to ensure that only the expansion shippers who use the capacity will pay for the incremental fuel and EPC costs associated with such expansion capacity. This finding is without prejudice to Texas Eastern seeking rolled-in rate treatment in the future for fuel costs and EPC costs associated with operation of the incremental capacity if it can demonstrate that it will not result in services using expansion capacity being subsidized by other shippers.

3. <u>Pre-Determination Supporting Rolled-in Rate Treatment</u>

29. Texas Eastern requests a pre-determination that it may roll costs associated with the Gulf Markets Project into its system-wide rates in a future section 4 rate proceeding. Texas Eastern asserts rolled-in rate treatment for project costs would not result in subsidization by existing shippers because the revenues from the firm transportation rates paid by the expansion shippers will exceed the incremental capacity's associated cost of service.

30. If we find in this certificate proceeding that there should be a presumption of rolled-in rate treatment for the project's costs in a future rate proceeding, Indicated Shippers request that we qualify that finding to ensure that Texas Eastern nevertheless will have the burden of proof to demonstrate that there have been no material changes in circumstances since this certificate proceeding.[23] In its answer, Texas Eastern acknowledges that a finding by the Commission in a certificate proceeding to establish a presumption of rolled-in rate treatment for a project's costs is subject to rebuttal if there have been significant changes in material circumstances by the time the pipeline

[23] Indicated Shippers March 25, 2015 Comment.

company proposes rolled-in rates in a section 4 rate proceeding.[24] Texas Eastern emphasizes, however, that a Commission finding supporting rolled-in rate treatment in a future rate proceeding has always operated to shift the burden of proof in the rate proceeding to parties opposing rolled-in treatment.

31. In a certificate proceeding, the Commission's policy is to make a finding supporting rolled-in rate treatment for the proposed project's costs in a future rate proceeding if the applicant demonstrates that rolling in the costs associated with the construction and operation of new facilities is not expected to result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project are expected to exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it will be appropriate to roll the costs of the proposed project into the pipeline company's system rates in a future rate proceeding, the Commission compares the costs of the project to the projected revenues to be generated utilizing actual contract volumes, the contract rates for any discounted-rate agreements, the actual negotiated rates for negotiated-rate agreements for which the negotiated rate is lower than the maximum applicable recourse rate, and the maximum recourse rate for any negotiated-rate agreements for which the negotiated rates are above maximum recourse rate.[25]

32. In the five precedent agreements for firm services using the capacity to be created by the Gulf Markets Project, four shippers have agreed to pay rates discounted below the proposed maximum FT-1 recourse rate (i.e., the currently-effective maximum Rate Schedule FT-1 recourse rate), and one shipper has agreed to a negotiated rate higher than the maximum FT-1 recourse rate. Consistent with Commission policy as described above for determining whether there should be a presumption of rolled-in rate treatment for a proposed project's costs in a future rate proceeding, we have compared the Gulf Markets Project costs with the revenues that will be generated at the contract rates for Texas Eastern's four discounted-rate agreements and at the maximum FT-1 recourse rate for the negotiated-rate agreement, which provides for a rate above the maximum FT-1 recourse rate. Texas Eastern's projected revenue from the reservation charges to be paid by the expansion shippers is $50,620,320 for each of the first three years of service.[26] Texas Eastern estimates the associated cost of service to be $44,809,320 for Year 1;

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[24] Texas Eastern April 9, 2015 Answer.

[25] *See, e.g., Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 33 (2015), and *Empire Pipeline, Inc*., 150 FERC ¶ 61,181, at P 63 (2015).

[26] Texas Eastern Application, Exhibit N (three-year statement of projected revenues and expenses and three-year cost-of-service analysis for the capacity created by the Project).

$44,304,810 for Year 2; and $43,647,775 for Year 3.[27] The projected revenues exceed the projected cost - of - service for the first three years of service using project facilities and capacity, and we therefore will grant Texas Eastern's request for a pre-determination supporting rolled-in rate treatment for the project's costs in a future NGA general section 4 rate proceeding, absent any significant change in material circumstances.[28]

33. When the Commission makes a finding in a certificate proceeding supporting a presumption of rolled-in rate treatment for a project's costs in a future rate case, such a presumption operates to shift the burden of proof to parties opposing rolled-in rate treatment to show that there have been material changes since the certificate proceeding that undermine the basis for the presumption.[29] Indicated Shippers have not provided any reason why we should modify that here. However, as discussed below, we are requiring Texas Eastern to separately account for the costs and revenues associated with the Gulf Markets Project in a manner that will enable parties to a future NGA general section 4 rate proceeding to identify and demonstrate whether there have been changed circumstances (e.g., a significant increase of costs or reduction in expected revenues) sufficient to rebut the presumption.[30]

4. Indicated Shippers' Requested Condition to Require Separate Accounting of Project Costs and Revenues

34. Although Texas Eastern will not be charging incremental rates as its initial section 7 rates for services using this project's expansion capacity, Indicated Shippers request a condition to require that Texas Eastern separately account for construction and operating costs and revenues associated with the project in accordance with the same requirements

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[27] *Id.* As discussed above, Texas Eastern will construct the project in two phases, with Phase 1 facilities completed and placed in service by November 1, 2016, and Phase 2 facilities in service by August 1, 2017.

[28] When the makes a finding in a certificate proceeding supporting a presumption of rolled-in rate treatment for a project's costs in a future rate proceeding and that finding relies on projected revenues from negotiated-rate agreements, the finding does not constitute approval of the negotiated rates. *See, e.g., Southern Natural Gas Company,* 113 FERC ¶ 61,199, at P 37 and n.27 (2005) (*Southern*), .

[29] *See, e.g., Dominion Transmission, Inc.*, 137 FERC ¶ 61,132, at P 22 (2011); *Dominion Transmission, Inc.*, 99 FERC ¶ 61,367, at P 68 and n.17 (2002); and *Eastern Shore Natural Gas Company*, 95 FERC ¶ 61,344, at 62,299 (2001).

[30] *See, e.g., Southern*, 113 FERC ¶ 61,199 at P 38 and *Tennessee Gas Pipeline Company*, 104 FERC ¶ 61,010 at P 4 (2003).

that apply under section 154.309 of the Commission's regulations to expansion projects for which incremental rates are approved.[31] Indicated Shippers contend that the requested condition is appropriate and necessary here to assist parties in a future rate proceeding to evaluate whether there have been any significant changes in circumstances that may provide a basis for rebutting a presumption of rolled-in rate treatment.

35. Texas Eastern opposes Indicated Shippers' request that we require separate accounting for the project in the same manner that section 154.309 of the regulations requires pipeline companies to account for costs and revenues when the Commission approves incremental rates for services using proposed expansion capacity. Texas Eastern asserts that the Commission has only imposed such separate accounting requirements as a condition on projects qualifying for a presumption of rolled-in rate treatment in response to concerns that cost overruns may negate the basis for the presumption. Texas Eastern asserts that if the Commission grants Indicated Shippers' requested condition in a proceeding where incremental rates are not being authorized and there is no cause for concern over cost overruns, it will greatly expand the realm of certificate projects for which pipeline companies must comply with the more burdensome accounting requirements of section 154.309.

36. As shown above, Texas Eastern's projected revenue from reservation charges for the expansion capacity are expected to exceed its associated annual cost of service by at least $5,911,000 during the first three years of service.[32] Texas Eastern is correct that projected revenues will exceed its estimated cost of service by significantly more than in previous instances where the Commission imposed a separate accounting requirement notwithstanding that it was approving the pipeline's proposal to charge its general system rates as its initial rates for expansion capacity.[33] However, we agree with Indicated

[31] 18 C.F.R. § 154.309 (2015).

[32] The highest associated cost of service -- $44,809,320 -- will occur during the first year of expansion service. Projected revenues are $50,620,320 each of the first three years of service.

[33] *See, e.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at P 30 (2014), and *Dominion Transmission, Inc.*, 146 FERC ¶ 61,091, at PP 9-10 (2014). In these cases, the Commission authorized the pipelines to charge generally applicable system rates for their expansion capacity and found that there would be a presumption of future rolled-in rate treatment for project costs. The Commission nevertheless required separate accounting for the projects because, although projected revenues exceeded estimated costs and revenues, the Commission agreed with some parties that construction cost overruns could cause costs to exceed revenues, and separate accounting would assist parties in the future rate proceedings to determine whether that was the case.

Shippers that separate accounting of the project's construction and operating costs and revenues will aid Commission staff and other parties in a future rate proceeding in evaluating whether there have been any significant changes in circumstances affecting the basis for our finding here that rolled-in rate treatment for the project's costs and revenues will be appropriate. We also believe that benefit outweighs any additional burden on the company. Therefore, we will require Texas Eastern to account for the project's associated construction and operating costs and revenues in accordance with section 154.309 of the regulations and Order No. 710.[34] When Texas Eastern proposes revised rates to roll in the costs of this Project, it must provide information consistent with Order No. 710's requirements, and in sufficient detail so that the data can be identified in the required Statements G, I, and J.

5. Negotiated Rates

37. Texas Eastern states that one Gulf Markets Project shipper has agreed to pay a negotiated rate in accordance with section 29 of the General Terms and Conditions of its tariff. Texas Eastern must file either the negotiated rate agreement or a tariff record setting forth the essential elements of its negotiated rate agreement, in accordance with the Commission's Alternative Rate Policy Statement[35] and negotiated rate policies.[36] This filing must be made at least 30 days, and not more than 60 days, before the proposed effective date of such rates.

6. Non-Conforming Agreements

38. Texas Eastern states that in addition to its proposed rates, it has agreed to certain non-conforming terms and conditions with shippers on the Gulf Markets Project. It requests that the Commission approve these provisions in this certificate order. Texas Eastern states that these non-conforming provisions reflect the unique circumstances

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[34] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs., ¶ 31,267, at PP 23-25 (2008). Order No. 710 amended the Commission's forms for the periodic reporting of information including cost and revenue data.

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

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

involved with securing the financial commitment necessary to support Texas Eastern's investment in the development and construction of the Gulf Markets Project, as well as the unique circumstances pertaining to project shippers and the Cameron LNG terminal. It asserts that approving these provisions provide shippers and Cameron LNG, LLC with incentives necessary to make a commitment to the Gulf Markets Project, and provide Texas Eastern with credit assurances to reduce its financial risks. Texas Eastern contends that these provisions do not present a risk of undue discrimination because of the unique operational circumstances involved in the project.

39. The non-conforming provisions that Texas Eastern seeks Commission approval of are:

- ramp-up provisions that would allow certain shippers to increase capacity under the agreement at specified times to accommodate more capacity becoming available due to operational and construction circumstances at the Cameron LNG terminal; as well as ramp-down provisions for similar operational and construction circumstances at the terminal;

- certain extension rights provisions. Under one provision, the shippers would have the right to extend the initial terms of the firm transportation agreements by up to two consecutive five-year terms. Under a different provision, the shippers would have the right to extend the initial term of the agreement by up to two consecutive periods of time with each such period of time being between one and five years, at full-year increments;

- a Most Favored Nation provision which would require Texas Eastern to reduce the rate charged to the project shipper in the event Texas Eastern provides a similarly situated shipper a more favorable rate for the same service provided to the project shipper;

- a provision that would provide Cameron LNG, LLC, with recall rights for any capacity release so that it will have that capacity available should it need it for the commissioning and commencement of service at the Cameron LNG Terminal; and

- a provision regarding indemnification of Texas Eastern for certain damages or other costs incurred by Texas Eastern as a result of the shipper's material non-compliance with any Department of Energy LNG Export Order for the Cameron LNG Terminal.

40. The Commission finds that the incorporation of these non-conforming provisions will constitute material deviations from Texas Eastern's pro forma service agreement for Rate Schedule FT-1. However, in other proceedings, we have 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 the project.[37] We find that the non-conforming provisions identified by Texas Eastern are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service to other shippers, and do not result in any shipper receiving a different quality of service.[38]

41. As discussed further below, when Texas Eastern files its non-conforming agreements with the Commission, we require Texas Eastern to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement.[39] This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

42. At least 30 days, but not more than 60 days, before providing service to shippers under non-conforming agreements, Texas Eastern must file an executed copy of each non-conforming agreement disclosing and reflecting all non-conforming language as part of Texas Eastern's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.[40] In addition, the Commission emphasizes that the above determination relates only to those items described by Texas Eastern in its certificate application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

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[37] *See, e.g.*, *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219 (2013); and *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

[38] *See, e.g.*, *Gulf South Pipeline Co., LP*, 115 FERC ¶ 61,123 (2006); and *Gulf South Pipeline Co., LP*, 98 FERC ¶ 61,318, at P 4 (2002).

[39] A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. *See, e.g.*, *Tennessee Gas Pipeline Co., L.L.C., et al.*, 150 FERC ¶ 61,160, at P 44 & n.33 (2015).

[40] 18 C.F.R. § 154.112 (2015).

IV. Environmental Analysis

43. On April 2, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Gulf Markets Expansion Project* (NOI). The NOI was published in the Federal Register[41] and mailed to approximately 280 parties, including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and property owners affected by the proposed project.

44. In response to the NOI, the Commission received comments from the Choctaw Nation of Oklahoma, the Texas Parks and Wildlife Department, and Alice Boutte, an interested individual, and a consultation letter from the U.S. Fish and Wildlife Service.

45. To satisfy the requirements of the National Environmental Policy Act of 1969,[42] our staff prepared an environmental assessment (EA) that was placed into the public record on October 5, 2015. The EA addressed geology and soils, water resources, vegetation and wildlife, fisheries, land use, recreation and visual resources, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. The substantive comments received in response to the NOI were addressed in the EA. The Commission did not receive any additional comments in response to the EA.

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

47. 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.[43]

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[41] 80 Fed. Reg. 19,313 (2015).

[42] 42 U.S.C. §§ 4321 *et seq.* (2012).

[43] *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the Natural Gas Act to the extent they conflict with

(continued ...)

48. At a hearing held on December 17, 2015, 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 all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct and operate the Gulf Markets 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 Texas Eastern'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 regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions listed in Appendix B of this order; and

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

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

(D) Texas Eastern's proposal to use its currently-effective system rates as the initial recourse rates for the Gulf Markets Project capacity is approved.

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federal regulation, or would delay the construction and operation of facilities approved by FERC); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Texas Eastern is required to use its system interruptible transportation rates.

(F) Texas Eastern's request for a pre-determination supporting rolled-in rate treatment for the costs of the Gulf Markets Project in its next NGA general section 4 rate proceeding is granted, barring a significant change in circumstances, as discussed in the body of this order.

(G) Texas Eastern's request to charge its currently effective system fuel retention percentages and EPC charges is denied. Texas Eastern is directed to file incremental fuel retention percentages and EPC charges at least 30 days, but not more than 60 days, prior to the date the project facilities go into service.

(H) Texas Eastern shall keep separate books and accounting of costs and revenues attributable to the Gulf Markets Project, as discussed in the body of this order.

(I) Texas Eastern must file its non-conforming and negotiated rate agreements at least 30 days, but not more than 60 days, prior to the date the project facilities go into service.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely, Unopposed Motions to Intervene

- Tennessee Valley Authority
- New Jersey Natural Gas Company
- NJR Energy Services Company
- Exelon Corporation
- Piedmont Natural Gas Company, Inc.
- PSEG Energy Resources and Trade LLC
- Atmos Energy Marketing LLC
- Atmos Energy Corporation
- Duke Energy Carolinas, LLC
  Duke Energy Progress, Inc.
- Columbia Gas of Pennsylvania, Inc.
- Pivotal Utility Holidings, Inc. d/b/a Elizabethtown Gas Company
- EQT Energy, LLC
- Calpine Energy Services, L.P.
- National Fuel Gas Distribution Corporation
- Consolidated Edison Company of New York, Inc.
  Orange and Rockland Utilities, Inc.
  Philadelphia Gas Works
- Range Resources-Appalachia LLC
- Chevron U.S.A. Inc.
- ConocoPhillips Company
- ExxonMobil Gas & Power Marketing Company
- Shell Energy North America (U.S.), L.P.
- SWEPI LP
- Direct Energy Business Marketing, LLC
- Anadarko Energy Services Company

Appendix B

Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Texas Eastern Transmission, LP (Texas Eastern) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Texas Eastern must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification**.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during the construction and operation activities 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**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility removal work shall be as described in the EA, as supplemented by filed maps and/or alignment sheets. **As soon as they are available, and before the start of construction**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller

than 1:6,000 with station positions for all work sites 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.

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

   This requirement does not apply to extra workspace allowed by the Texas Eastern's E&SCP 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 workspace 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 this authorization and before construction begins,** Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

   a. how Texas Eastern would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;

b. how Texas Eastern would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
e. the location and dates of the environmental compliance training and instruction Texas Eastern would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
f. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
g. the procedures (including use of contract penalties) Texas Eastern would follow if noncompliance occurs; and
h. 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, Texas Eastern shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. an update on Texas Eastern's efforts to obtain the necessary federal authorizations;
b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and

g. copies of any correspondence received by Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.

8. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities** Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. Texas Eastern must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the authorized facilities in service**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or

b. identifying which of the Certificate conditions Texas Eastern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Texas Eastern shall file a noise survey with the Secretary **no later than 60 days** after placing the Provident City Compressor Station in service. If a full power load condition noise survey is not possible, Texas Eastern 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 equipment at the Provident City Compressor Station under interim or full horsepower load conditions exceeds an day-night sound level of 55 A-weighted decibel scale at any nearby noise sensitive area, Texas Eastern shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Texas Eastern shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**.