

154 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC

Docket No. CP15-105-000

ORDER ISSUING CERTIFICATE

(Issued January 21, 2016)

1. On March 4, 2015, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting certificate authorization to construct and operate its Western Kentucky Lateral Project (Western Kentucky Lateral) to provide service for Tennessee Valley Authority's (TVA) electric generation plant in Muhlenberg County, Kentucky (Paradise Plant). For the reasons discussed below, the Commission will grant Texas Gas's requested authorization, subject to appropriate conditions.

**I. Background and Proposal**

2. Texas Gas is a natural gas company as defined by section 2(6) of the NGA.<sup>1</sup> Texas Gas transports natural gas in interstate commerce for customers in Texas, Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois, and Ohio.

3. Texas Gas proposes to construct and operate the Western Kentucky Lateral to provide 230,000 dekatherms per day (Dth/d) of firm natural gas transportation service for TVA, which is installing new facilities to use natural gas as fuel to produce electricity at its existing Paradise Plant.<sup>2</sup> Texas Gas will construct an approximately 22.5-mile, 24-inch-diameter natural gas pipeline lateral that will extend from its Midland 3 Compressor Station to the proposed interconnection with the TVA's Paradise Plant. At

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<sup>1</sup> 15 U.S.C. § 717(a)(6) (2012).

<sup>2</sup> TVA's new gas units will replace two coal-fired units at its existing Paradise Plant to comply with the U.S. Environmental Protection Agency's Mercury and Air Toxic Standards. *See* Texas Gas Application at Resource Report 1, p. 1-1.

the proposed interconnection, Texas Gas will construct a meter and a regulator station, as well as appurtenant auxiliary facilities. All project facilities will be located in Muhlenberg County, Kentucky.

4. The Western Kentucky Lateral will have a total design capacity of 230,000 Dth/d.<sup>3</sup> Texas Gas and TVA executed a binding 20-year precedent agreement for 230,000 Dth/d of firm natural gas transportation service using the proposed Western Kentucky Lateral. Texas Gas estimates that the Western Kentucky Lateral will cost \$81 million.

5. TVA has elected to pay a negotiated rate for firm transportation service on the lateral. However, Texas Gas also proposes incremental recourse rates for firm and interruptible transportation service on the Western Kentucky Lateral.<sup>4</sup>

## **II. Notice and Interventions**

6. Notice of Texas Gas's application was issued on March 18, 2015, and published in the *Federal Register* on March 25, 2015 (80 Fed. Reg. 15,782). The notice established April 8, 2015, as the deadline for interventions, comments, and protests. Tennessee Valley Authority; Western Tennessee Municipal Group jointly with the Jackson Energy Authority, Kentucky Cities, and City of Jackson, Tennessee; Elizabethtown Gas; Atmos Energy Corporation; Atmos Energy Marketing LLC; and Kentucky Coal Association filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>5</sup>

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<sup>3</sup> To obtain gas to transport on the proposed lateral, TVA acquired firm transportation service on Texas Gas's mainline system during an open season that Texas Gas held from July 28 through August 1, 2014. Specifically, TVA acquired 160,000 Dth/d firm transportation from Zone SL to the proposed lateral; 40,000 Dth/d of Summer No-Notice service (SNS) in Zone 3; and 40,000 Dth/d of Winter No-Notice service (WNS) in Zone 3.

<sup>4</sup> On March 30, 2015, the Commission accepted Texas Gas's rate schedules filed in Docket No. RP15-440-000 for services on new market area laterals. *See Texas Gas Transmission, LLC*, 150 FERC ¶ 61,236 (2015). As discussed in that order, these rate schedules will set forth the initial recourse rates approved in this order and in other certificate proceedings in which Texas Gas receives authorization to construct new laterals. *Id.* PP 2-3.

<sup>5</sup> 18 C.F.R. § 385.214(c) (2015).

7. No comments were filed in opposition to Texas Gas's proposed project. TVA filed comments in support of the project and requests that the Commission modify its policy regarding the bumping of interruptible services. TVA's request is addressed below.

### **III. Discussion**

8. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, 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**

9. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>6</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, 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.

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, 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

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<sup>6</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

11. 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, in general, that when a pipeline proposes an incremental rate to recover the cost of a proposed lateral, the pipeline satisfies the Certificate Policy Statement's threshold requirement that the project not be subsidized by existing shippers.<sup>7</sup> Texas Gas proposes an incremental recourse rate for firm service on the Western Kentucky Lateral that is designed to recover the full cost of the lateral. Accordingly, we find existing shippers will not subsidize service on the proposed lateral, and we find that the threshold no-subsidy requirement has been met.

12. The Western Kentucky Lateral will enable Texas Gas to provide 230,000 Dth/d of incremental firm transportation service to TVA, which has signed a 20-year precedent agreement to contract for all of the lateral's capacity.<sup>8</sup> None of Texas Gas's existing customers have indicated any concerns that construction, operation, or services on the Western Kentucky Lateral will adversely affect existing services. Nor is there any evidence that Texas Gas's proposed project will adversely affect any other pipelines or their customers. Because TVA's power plant to be served by the Western Kentucky Lateral is a new gas market, the project will not replace firm transportation service on any other pipeline.

13. No landowners along the route for the Western Kentucky Lateral or residents or businesses in the vicinity filed comments opposing the project, and Texas Gas states that it will continue to work with landowners to minimize any concerns about the amount of permanent right-of-way and temporary workspace needed to construct the project. Thus, Texas Gas has designed the project to minimize impacts on landowners and surrounding communities.

14. 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, the Commission finds that Texas Gas's proposed project

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<sup>7</sup> See, e.g., *Texas Gas Transmission, LLC*, 153 FERC ¶ 61,323, at P 11 (2015) (finding that existing shippers would not subsidize the lateral project because all costs associated with the new lateral services were allocated solely to new lateral customers).

<sup>8</sup> A separate rate will apply to any service a Western Kentucky Lateral shipper obtains on Texas Gas's mainline.

satisfies the Certificate Policy Statement. Based on this finding and the environmental review of Texas Gas's proposal, discussed below, the Commission further finds that the public convenience and necessity requires approval of Texas Gas's proposal under section 7 of the NGA, as conditioned in this order.

## **B. Rates**

15. The Commission has reviewed Texas Gas's proposed cost-of-service and proposed initial recourse rates for service on the Western Kentucky Lateral and generally finds them reasonable, subject to the modifications and conditions discussed below.

### **1. Incremental Rates**

16. Texas Gas proposes to establish initial recourse rates for firm and interruptible services using the proposed Western Kentucky Lateral under new Rate Schedules FLS (Firm Lateral Service) and ILS (Interruptible Lateral Service).<sup>9</sup> Texas Gas proposes a daily maximum incremental reservation recourse rate of \$0.1761 per Dth for firm service on the Western Kentucky Lateral. The proposed maximum recourse rate under Rate Schedule ILS for interruptible service on the lateral will be the 100 percent load factor equivalent of the monthly firm transportation rate. Texas Gas developed its firm reservation rate by dividing the annual cost of service for the project of \$14,780,145 by the annual transportation quantity of 83,950,000 Dth (230,000 Dth/day capacity x 365 days). In developing the proposed cost-of-service rates, Texas Gas proposes using an overall rate of return of 9.88 percent based on Texas Gas's actual capital structure in its most recent FERC Form 2 filing and a return on equity (ROE) of 14 percent.

17. We have reviewed the proposed cost of service and incremental recourse rates for service on the Western Kentucky Lateral and find that they are reasonable, with the exception of Texas Gas's proposal to use the actual capitalization from its most recent FERC Form 2 and an ROE of 14 percent to calculate the overall return. When developing incremental rates for expansions of existing pipeline systems, the Commission's general policy is to use the rate of return components approved in the pipeline's last general NGA section 4 rate proceeding.<sup>10</sup> Texas Gas provides no justification for using the actual capitalization in its most recent FERC Form 2 and a

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<sup>9</sup> As noted above, the Commission has accepted tariff records filed by Texas Gas in Docket No. RP15-440-000 for service under Rate Schedules FLS and ILS on new market area laterals. *Texas Gas Transmission, LLC*, 150 FERC ¶ 61,236 (2015).

<sup>10</sup> See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at n.37 (2015).

ROE component different from its most recently approved ROE.<sup>11</sup> Therefore, we will deny Texas Gas's proposal to use the proposed factors and direct Texas Gas to file, between 30 and 60 days before the project's in-service date, revised recourse rates to reflect the capitalization and ROE components used in calculating the rates approved in its last NGA general section 4 rate proceeding.

18. Texas Gas did not propose a commodity rate for applicable services on the Western Kentucky Lateral and there are no variable costs recorded in Exhibit N to Texas Gas's application. Therefore, we will require Texas Gas to establish an incremental commodity recourse rate of \$0.00 per MMBtu.<sup>12</sup>

19. In its May 21, 2015 data response, Texas Gas states that before placing the proposed facilities into service it will file to restate its maximum recourse rate on the Western Kentucky Lateral based on costs incurred and projected costs to complete the project.<sup>13</sup> If Texas Gas intends to make changes not authorized by this order before placing the Western Kentucky Lateral into service, Texas Gas must file an application under NGA section 7(c) to amend its certificate authorization sufficiently in advance of its proposed in-service date to enable the Commission to process and act on the amendment request. In that filing, Texas Gas must provide cost data and the required exhibits supporting any revised rates, terms, and conditions of service. Should the lateral be placed into service before the Commission acts to amend the initial rates authorized by this order, any pending application for such an amendment will be terminated and Texas Gas will have to file under NGA section 4 to change its rates, terms, or conditions of service.<sup>14</sup>

## **2. Interruptible Services Revenue Crediting**

20. When establishing initial rates applicable to new laterals, the Commission requires that a pipeline either credit all interruptible revenues, net of variable costs, to shippers

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<sup>11</sup> See, e.g., *Gas Transmission Northwest, LLC*, 142 FERC ¶ 61,186, at n.10 (2013).

<sup>12</sup> See, e.g., *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214, at P 20 (2015). Section 284.7(e) of the Commission's regulations, 18 C.F.R. 284.7(e) (2015), provides that a pipeline company's reservation charge for firm transportation service may not recover any variable costs or fixed costs not attributable to the firm service.

<sup>13</sup> See May 21, 2015 Data Request Response at 4.

<sup>14</sup> See *Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283, at P 90 (2014).

paying maximum rates, or that the pipeline allocate volumes and costs to its interruptible service.<sup>15</sup> In its May 21, 2015, response to a data request, Texas Gas states it will allocate costs and volumes to interruptible services before placing the project in service.

21. Therefore, when Texas Gas files its revised recourse rate filing required above, we will require Texas Gas to credit interruptible revenues, net of variable costs, to maximum rate paying customers, or to allocate costs and volumes to interruptible services.

### **3. Record Keeping for Facility Costs**

22. Consistent with Commission policy,<sup>16</sup> Texas Gas is directed to keep separate books and accounting of costs attributable to the project to assure that costs are properly allocated between Texas Gas's existing shippers and incremental services using the Western Kentucky Lateral. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations,<sup>17</sup> and information must be maintained in sufficient detail so that data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and information provided consistent with Order No. 710.<sup>18</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 assist the Commission and parties in any rate proceedings to determine project costs.

23. As noted above, Texas Gas and TVA have agreed to a negotiated rate. Texas Gas must file either its negotiated rate agreement or tariff records, setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative

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<sup>15</sup> See *Transcontinental Gas Pipe Line Co.*, 130 FERC ¶ 61,019, at P 21 (2010); *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136, at 61,475 (1997).

<sup>16</sup> See, e.g., *Transcontinental Gas Pipe Line Company, LLC*, 153 FERC ¶ 61,077, at P 26 (2015).

<sup>17</sup> 18 C.F.R. § 154.309 (2015).

<sup>18</sup> See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

Rate Policy Statement<sup>19</sup> and the Commission's negotiated rate policies.<sup>20</sup> Such filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.<sup>21</sup>

#### **4. TVA's Opposition to the Commission's "No Bump" Policy**

24. TVA opposes the Commission's "no bump" policy which prevents firm shippers from bumping scheduled interruptible service during the final nomination cycle of the gas day.<sup>22</sup> TVA argues that because firm shippers bear 100 percent of the project cost, they should not have their firm transportation rights become null and void at some point of the day. Accordingly, TVA requests that the Commission modify its policy on bumping rights so that shippers that contract for firm service on market laterals can bump interruptible shippers at any time.

25. TVA's request to revise the Commission's bumping policies is beyond the scope of this proceeding. In any event, in Order No. 809, the Commission declined to modify or eliminate the long-standing No-Bump Rule, as requested by several parties, including

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<sup>19</sup> See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; 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.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

<sup>20</sup> See *Natural Gas Pipelines 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, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

<sup>21</sup> Section 154.112 of the Commission's regulations, 18 C.F.R. 154.112 (2015), requires pipelines to file, between 30 and 60 days of the commencement of service, service agreements that contain non-conforming provisions and disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

<sup>22</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*; Order No. 587-G, 63 Fed. Reg. 20,072 (Apr. 23, 1998), FERC Stats. & Regs., Regs. Preambles July 1996 - December 2000 ¶ 31,062, at pp. 30,669-72 (1998).

TVA.<sup>23</sup> The Commission found sufficient support for retaining the no-bump cycle and respecting the natural gas industry consensus that making the last intraday nomination opportunity no-bump achieves a reasonable balancing of interests by providing stability to the nomination system while accommodating the needs of firm shippers.<sup>24</sup> The Commission's accepting Texas Gas's proposed new rate schedules for services on new market area laterals also found that the proposed rate schedules were consistent with the no-bump policy and rejected the same argument by TVA.<sup>25</sup>

## 5. Fuel and Lost and Unaccounted For Gas Retention

26. Texas Gas's application does not address the collection of fuel or lost and unaccounted for gas (LAUF) on the Western Kentucky Lateral. The Commission's policy is that pipelines are required to recover LAUF from shippers on a lateral, just as shippers on the existing system are assessed for LAUF gas on those facilities.<sup>26</sup> Pipelines are not required to use the system rate to recover LAUF gas on the lateral, but may develop a methodology that fits the operational characteristics of the lateral. Therefore, we will require Texas Gas to explain how it will determine the retention level for LAUF on the Western Kentucky Lateral when it makes its first fuel tracker filing after the in-service date of the project.<sup>27</sup>

### C. Environmental Analysis

27. On May 5, 2015, Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Western Kentucky Lateral Project and Request for Comments on Environmental Issues* (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

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<sup>23</sup> See *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, FERC Stats. & Regs. ¶ 31,368, at P 106 (2015)).

<sup>24</sup> *Id.*

<sup>25</sup> *Texas Gas Transmission, LLC*, 150 FERC ¶ 61,236, at P 19 (2015).

<sup>26</sup> See *Eastern Shore Natural Gas Co.*, 145 FERC ¶ 62,153, at 64,309 (2013); *Transcontinental Gas Pipe Line Co.*, 130 FERC ¶ 61,019; *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,240, at P 6 (2002) (*Columbia*).

<sup>27</sup> See *Columbia*, 100 FERC ¶ 61,240 at P 6.

newspapers; and affected property owners. The U.S. Fish and Wildlife Service (FWS), Kentucky Division of Water, and the Kentucky Coal Association filed comments in response to the NOI.

28. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an environmental assessment (EA) for Texas Gas's proposal, which was placed into the public record on November 17, 2015. 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, cumulative impacts, and alternatives. The EA addressed the comments that were filed in response to the NOI by FWS, Kentucky Division of Water, and the Kentucky Coal Association.<sup>28</sup> No further comments were filed.

29. Based on the analysis in the EA, we conclude that if constructed in accordance with Texas Gas'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.

30. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.<sup>29</sup>

31. At a hearing held on January 21, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

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<sup>28</sup> See EA at 2-3 (addressing comments by Kentucky Coal Association); at 11 (addressing comments by Kentucky Division of Water); and at 24-29 (addressing comments by FWS).

<sup>29</sup> 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 NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Texas Gas Transmission, LLC (Texas Gas) to construct and operate the Western Kentucky Lateral Project (Western Kentucky Lateral) facilities, as described more fully in the application and in the body of this order.

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

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

(2) Texas Gas's compliance with all applicable Commission regulations including, but not limited to, Part 284 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Texas Gas's compliance with the environmental conditions listed in the appendix to this order; and

(4) Texas Gas's execution of firm contracts for the capacity levels and terms of service represented in signed precedent agreement[s], before commencing construction.

(C) Texas Gas's request for authority to charge incremental rates for the Western Kentucky Lateral is approved, subject to Texas Gas filing revised rates as discussed above.

(D) Texas Gas shall file revised tariff records that comply with the requirements contained in the body of this order no earlier than 60 days and no later than 30 days, before the date the Western Kentucky Lateral project facilities go into service.

(E) When Texas Gas makes its first fuel tracker filing after the in-service date of the Western Kentucky Lateral, it must explain how it will estimate and recover costs associated with any LAUF gas over the Western Kentucky Lateral project facilities.

(F) Texas Gas is directed to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

(G) Texas Gas 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 Texas Gas. Texas Gas

shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## APPENDIX

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

1. Texas Gas Transmission, LLC (Texas Gas) 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 Gas must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of 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 activities associated with the 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 of facilities,** Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction,** Texas Gas shall file with the Secretary any revised construction workspace configuration drawings at a scale not smaller than 1:6,000 with station positions for all activities 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.

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

5. Texas Gas shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, 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 FERC *Upland Erosion Control, Revegetation & Maintenance 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 authorization and before construction begins,** Texas Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Gas must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Gas would implement construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Texas Gas 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, 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 instructions Texas Gas will give to all personnel involved with construction activities and restoration (initial and refresher training as the project progresses and personnel change)
  - f. the company personnel (if known) and specific portion of Texas Gas's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Texas Gas will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Texas Gas shall employ at least one EI per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Texas Gas 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 Texas Gas'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(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/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 Gas from other federal, state or local permitting agencies concerning instances of noncompliance, and Texas Gas's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Texas Gas shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Gas 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 facility sites and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or

- b. identifying which of the Authorization conditions Texas Gas 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.
1. Texas Gas shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for all water supply wells within 150 feet of construction workspaces. **Within 30 days of placing the facilities in service**, Texas Gas shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.
2. **Prior to construction**, Texas Gas shall file with the Secretary a revised SPCC Plan that prohibits refueling activities and storage of hazardous liquids within at least a 200-foot radius of all private water supply wells.
3. If vegetation clearing is required between April 15 and August 31, Texas Gas shall submit to the U.S. Fish and Wildlife Service and file concurrently with the Secretary a migratory bird conservation plan. Texas Gas **shall not clear any woody vegetation between April 15 and August 31 until** FERC staff has reviewed the plan and any U.S. Fish and Wildlife Service comments on the plan, and the Director of the OEP has notified Texas Gas in writing that project clearing may begin.
4. Texas Gas **shall not begin construction activities until:**
  - a. the memorandum of agreement between Texas Gas and the U.S. Fish and Wildlife Service regarding summer bat habitat is completed, found acceptable by the U.S. Fish and Wildlife Service, and filed with the Secretary; and
  - b. Texas Gas has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
5. **Prior to construction**, Texas Gas shall coordinate with the Kentucky Department of Fish and Wildlife Resources about the feasibility of seasonal hunting project construction restrictions near the Peabody Wildlife Management Area, and file with the Secretary copies of all communication between Texas Gas and the Kentucky Department of Fish and Wildlife Resources regarding the project construction restrictions.
6. Texas Gas **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until:**

- a. Texas Gas files with the Secretary:
  - (1) remaining cultural resources survey report(s);
  - (2) any site evaluation report(s) and avoidance/treatment plan(s), as required; and
  - (3) comments on the cultural resources reports and plans from the Kentucky State Historic Preservation Office.
- b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Texas Gas in writing that treatment plans/mitigation measures (including archaeological data recovery) 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.”**