

156 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Eastern Shore Natural Gas Company

Docket No. CP15-498-000

ORDER ISSUING CERTIFICATE

(Issued July 21, 2016)

1. On May 22, 2015, Eastern Shore Natural Gas Company (Eastern Shore) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing it to construct and operate certain facilities located in New Castle, Kent, and Sussex Counties, Delaware (System Reliability Project). As discussed below, the Commission will grant the requested authorization, subject to certain conditions.

I. Background and Proposal

2. Eastern Shore¹ is a natural gas company within the meaning of section 2(6) of the NGA.² Eastern Shore operates an interstate natural gas pipeline in Pennsylvania, Delaware, and Maryland.

3. Eastern Shore proposes to construct and operate its System Reliability Project, comprised of approximately 2.5 miles of 16-inch-diameter pipeline looping in New Castle County (Porter Road Loop), 7.6 miles of 16-inch diameter pipeline looping in Kent County (Dover Loop), and 1,775 horsepower (hp) of additional compression at Eastern Shore's existing Bridgeville Compressor Station in Sussex County.

4. Eastern Shore states that the proposed System Reliability Project is needed to ensure continuity and reliability of service to meet existing firm customer demands. Eastern Shore states that two critical elements of its system are (1) the delivery pressures it receives from three upstream pipelines at four interconnections at the north end of its

¹ Eastern Shore is a wholly-owned subsidiary of Chesapeake Utilities Corporation (Chesapeake Utilities).

² See 15 U.S.C. § 717a(6) (2012).

system, and (2) adequate compression, particularly at the southern end of its system in Bridgeville, Delaware. With respect to the first element, Eastern Shore states that because of the extreme weather conditions during the winters of 2014 and 2015, the pipelines providing gas supplies into Eastern Shore's system were forced to issue Force Majeure notices and Operational Flow Orders, causing inlet pressure at the Parkesburg, Pennsylvania interconnection with Transcontinental Gas Pipe Line Company, LLC (Transco) to fall below those assumed in Eastern Shore's system design.³ With respect to the second element, Eastern Shore states that it concurrently experienced operational difficulties on its own system, including short-term unplanned outages at its compressor stations which impaired Eastern Shore's ability to satisfy the natural gas needs of its customers.

5. Eastern Shore states that the proposed System Reliability Project will address the observed discrepancies in the design versus actual (1) minimum peak day inlet pressure at the Parkesburg interconnect with Transco; and (2) operating conditions at the Bridgeville Compressor Station,⁴ thereby eliminating bottlenecks that resulted in inadequate delivery pressures in the southern portions of its system during the winters of 2014 and 2015. Eastern Shore states that ensuring maintenance of adequate delivery pressures during peak demand periods benefits all customers by avoiding the need for system-wide curtailments. The specific project facilities were selected because they provide redundancy that will reduce the possibility of system outages in the event of damage to Eastern Shore's facilities, thereby enhancing system reliability on a year-round basis.

6. Eastern Shore estimates the total cost of the System Reliability Project to be \$32,077,500. Eastern Shore seeks a predetermination that it may roll the project costs into its existing system rates in its next NGA section 4 rate proceeding.

³ In January 2014 and February 2015, Eastern Shore was confronted with historic low pressure conditions at its Parkesburg interconnection – as low as 440 pounds per square inch gauge (psig), whereas its peak day design assumes a minimum of 490 psig.

⁴ Eastern Shore states that the existing Bridgeville Compressor Station design assumes that one 600 hp unit will always be available for operation on a peak day, and the other 600 hp unit will be available as a backup. However, actual operational experience has indicated that operating both compressor units is beneficial. Hence, Eastern Shore states that under current configuration, both compressor units at the Bridgeville Compressor Station operate on regular basis and thus no backup compression is assumed in its system design.

II. Notice, Interventions, Protests, Comments, and Answers

7. Notice of Eastern Shore's application was published in the *Federal Register* on June 16, 2015 (80 Fed. Reg. 34,402). Delaware City Refining Company LLC (Delaware Refining); Pivotal Utility Holdings, Inc.; Easton Utilities Commission; and Calpine Energy Services, L.P. (Calpine) filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁵

8. Chesapeake Utilities and Farm Lands, LP filed late, unopposed motions to intervene. Chesapeake Utilities and Farm Lands, LP have demonstrated an interest in this proceeding and have shown that their participation will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Accordingly, we will grant the late, unopposed motions to intervene.⁶

9. Delaware Refining, Eastern Shore's largest shipper, filed a protest. Calpine, another Eastern Shore shipper, filed comments. Eastern Shore filed an answer to Delaware Refining's protest and Calpine's comments. Thereafter, Delaware Refining filed an answer to which Eastern Shore filed another answer. The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers unless otherwise ordered by the decisional authority.⁷ We will accept the answers of Eastern Shore and Delaware Refining because they provide information that has assisted in our decision-making process. The issues raised in the protest and comments are addressed below.

10. Delaware Refining requests a technical conference to examine whether Eastern Shore's proposed project is, in fact, a reliability project. The Commission concludes that all of the issues of material fact relating to Eastern Shore's application are capable of resolution based on the written record. Consequently, there is no need to convene a technical conference to explore the issues raised by Delaware Refining.

III. Discussion

11. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation

⁵ 18 C.F.R. § 385.214(c) (2015).

⁶ 18 C.F.R. § 385.214(d) (2015).

⁷ 18 C.F.R. § 385.213(a)(2) (2015).

of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁸ The Certificate Policy Statement establishes 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 explains 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.

13. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant 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 adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

14. As stated, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Certificate Policy Statement provides that it is not a subsidy for existing customers to pay for projects designed to improve the reliability or flexibility of existing

⁸ *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).

services.⁹ As discussed in detail below in the Engineering section of this order, Eastern Shore's proposed project is required in order to ensure the continued reliable and efficient operation of its system. Thus, the Commission finds that there will be no subsidization of the project by existing customers.

2. Existing Customers and Other Pipelines and Their Customers

15. The System Reliability Project will not result in the degradation of shippers' services to Eastern Shore's existing customers. In fact, as discussed in detail in the Engineering section of this order, the project is designed to maintain the reliability of existing Eastern Shore's services, not to create expansion capacity. In addition, no other pipelines or their captive customers have protested Eastern Shore's proposal. Thus, we find that there will be no adverse impacts on Eastern Shore's existing customers, other pipelines, or their captive customers.

3. Landowners and Communities

16. Eastern Shore states that construction associated with the new compression will be limited to the existing compressor station site, while the proposed pipeline looping construction will be placed along utility corridors and/or state highway rights-of-way as much as possible. Eastern Shore asserts that for any temporary or permanent right-of-way requiring private easement, Eastern Shore will work with landowners to minimize impacts affecting surface uses of their property. No landowners protested the proposal. Thus, the Commission finds that Eastern Shore has designed the project to minimize impacts on landowners and surrounding communities.

4. Conclusion

17. As detailed in the Engineering section of this order, the Commission finds that the proposed System Reliability Project will provide system-wide benefits for all shippers on Eastern Shore's integrated pipeline system. Based on the benefits the proposed System Reliability Project will provide and the lack of adverse effects the project will have on Eastern Shore's shippers, other pipelines and their captive customers, landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Eastern Shore's proposal, subject to the conditions discussed below.

⁹ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

B. Engineering

18. Delaware Refining argues that the proposed facilities do not benefit Eastern Shore's system, claiming that the Porter Road Looping facilities are not necessary to ensure pressures or provide any other benefit to Delivery Zone 1 shippers, nor are they an integrated part of the proposed Dalton Loop or Bridgeville Compressor Station facilities in Delivery Zone 3. Delaware Refining asserts it did not experience any loss of service as a result of the alleged inlet pressure reductions from Transco that Eastern Shore experienced in the winters of 2014 and 2015, and supposes that any pressure or reliability concerns in Delivery Zone 1 can be resolved by Eastern Shore's proposed White Oak Expansion Project, pending before the Commission in Docket No. CP15-18-000.

19. As for the proposed Dalton Loop and Bridgeville Compressor Station facilities, Delaware Refining claims that these facilities only address pressure issues in the southern end of the system. Moreover, Delaware Refining asserts that the need for these facilities does not arise out of reliability concerns, but rather as the result of a series of Eastern Shore system expansions over the past 15 years, undertaken for Eastern Shore's affiliate, Chesapeake Utilities, in which Eastern Shore failed in each instance to add any new compression. Consequently, Delaware Refining requests that the Commission deny Eastern Shore a certificate to construct and operate the Porter Road Loop and, if it grants a certificate for the proposed Delivery Zone 3 facilities, determine that Eastern Shore is not entitled to a presumption of rolled-in rate treatment for the costs of the new facilities.

20. Calpine questions whether Eastern Shore's proposed project is the "most appropriately-tailored approach" to address the system problems identified by Eastern Shore, particularly in view of the project's rate impact, which Calpine estimates would result in a 30 percent increase in Eastern Shore's rate base. Calpine suggests, for example, that any of several pending upstream pipeline expansions might mitigate the system reliability concerns identified. Calpine further requests that the Commission ensure that rolled-in rate treatment for the project's costs is justified and, if so, that the Commission require Eastern Shore to identify on its electronic bulletin board any additional capacity that results from the project.

21. Eastern Shore contends that Delaware Refining is fundamentally incorrect because ensuring maintenance and adequate delivery pressures on its integrated system during peak demand periods benefits all customers by avoiding the need for system-wide curtailments. Eastern Shore states that it thoroughly reviewed its system after experiencing extreme weather conditions in 2014 and identified pressure restricting bottlenecks and areas of its mainline system where it could achieve the greatest benefit to system reliability by adding redundancy. Eastern Shore further states that it evaluated numerous alternatives, as documented in Resource Report 10 of its application.

22. Eastern Shore also states that Calpine's assertion that the project would result in a 30 percent increase in Eastern Shore's rate base is not accurate because many factors, aside from the cost of the project, will influence rates in Eastern Shore's next general rate case. Eastern Shore further states that (1) it cannot design its system based on any assumed pressure increases resulting from pending expansion projects by upstream pipelines because none of the upstream pipelines are contractually bound to deliver gas to Eastern Shore at a particular pressure, and (2) no incidental capacity will result from construction of the project facilities.

23. Eastern Shore states that the White Oak Mainline Expansion Project's purpose is to provide incremental firm service to Calpine to supply fuel to a new power plant near Dover, Delaware; not to produce reliability enhancements. As for Delaware Refining's suggestion that any future issues can be adequately addressed through various tariff tools as was done in the past invoking operational flow orders (OFOs), Eastern Shore responds that managing the problem of reduced Transco delivery pressures by invoking OFOs is not a reasonable or acceptable option for its customers and the high priority gas consumers they serve.

24. Eastern Shore's system is an integrated pipeline system.¹⁰ It is comprised of three compressor stations and loop lines stretching from four receipt point in Receipt Zones 1 and 2 in Pennsylvania through its Delivery Zones 1 – 3 in Delaware and small diameter lines terminating in the State of Maryland. The pipeline diameters throughout the system range from 16-inches at the receipt points in the northern part of the system gradually decreasing to 6-inches at the southernmost delivery points. As a result of this system configuration, changes in upstream receipt pressures have a direct impact on the delivery pressures to Eastern Shore's shippers.

25. The Commission has reviewed the studies provided by Eastern Shore, together with the parties' various filings, and concludes that the Porter Road Loop will help mitigate the pressure reduction associated with the observed decrease in delivery pressure from Transco at the Parkesburg receipt point into Eastern Shores system. More importantly, the pipeline loop will increase system reliability by providing redundancy to Delaware Refining, as well as downstream shippers, in the event of an outage on Eastern Shore's 10-inch-diameter line. The Commission finds that the Porter Road Loop will provide benefits that will have a positive impact on system operations and reliability that will impact all three of Eastern Shore's Delivery Zones.

¹⁰ In an integrated system, the individual components or subsystems work together such that a change in one subsystem will affect the system as a whole.

26. The Commission also concludes, based upon a review of the studies provided, that the proposed 7.6-mile Dover Loop, as well as the new compressor at the Bridgeville Compressor Station, will allow Eastern Shore to maintain delivery pressures in the southern portion of its pipeline system in Delivery Zone 3. These facilities are responsible for mitigating pressure loss associated with the existing service with a reduction in pressure from Transco's gas deliveries at a interconnect pressure of 440 psig. Without these facility additions, service to shippers at the end of Eastern Shore's small diameter lines into Maryland would most likely be impossible resulting in curtailment of service to all of its shippers across all three delivery zones. Further, the Dover Loop, like the Porter Road Loop, will also increase redundancy in Delivery Zone 3. With these proposed facilities in-place, service reliability will be maintained and enhanced.

27. Based upon the demonstrated uncertainty of Transco's delivery pressure into Eastern Shore, the Commission finds that Eastern Shore has prudently evaluated, designed and proposed the additional facilities in the System Reliability Project design. Contrary to Delaware Refining's and Calpine's contention, the additional facilities proposed by Eastern Shore will provide system-wide benefits for all shippers attached to Eastern Shore's integrated pipeline system.

C. Rates

28. The Certificate Policy Statement provides that increasing the rates of existing customers to pay for projects designed to improve reliability or flexibility in providing existing services is not a subsidy, and that the costs of such a project are permitted to be rolled into system rates in a future rate case.¹¹ Here, as determined above, Eastern Shore's proposed project is solely intended to maintain pressures across its integrated system to ensure reliability of service for all customers. There will be no new firm expansion service offered, and the project will not increase capacity on Eastern Shore's system.

29. Accordingly, the Commission will grant Eastern Shore a pre-determination of rolled-in rate treatment for the costs associated with its proposed System Reliability Project in its next general section 4 rate case proceeding, absent any significant change in circumstances. The Commission has reached similar preliminary determinations in prior cases where, as here, the costs incurred are attributable to the maintenance of safety and

¹¹ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

reliability for the benefits of existing customers.¹² However, the Commission's finding that the proposed project will provide significant benefits to all shippers on Eastern Shore's integrated pipeline system is not a finding that the proposed project will provide equal benefits to all shippers. Accordingly, our determination regarding rolled-in rates does not presume any decision with regard to the appropriate allocation of project costs, and the parties will be free to fully argue their positions when Eastern Shore files an NGA section 4 general rate case to roll its facility costs into its current system rates.

D. Environmental

30. On September 4, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed System Reliability Project and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local government officials; agency representatives; Native American tribes; environmental and public interest groups; local libraries and newspapers; and property owners affected by construction of the pipeline facilities.

31. We received comments on the NOI from the National Park Service and two landowners. The primary issues raised concern potential impacts on the Bridgeville Playground, which was funded through a National Park Service Land and Water Conservation Fund Grant; public safety; effects on private property (including property values); impacts on wetlands and the 100-year floodplain; noise; vibration from trains; alternatives to the project; and whether the Porter Road Loop would be necessary for system reliability.

32. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an Environmental Assessment (EA) for Eastern Shore's proposal.¹³ The EA addressed 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. All substantive

¹² See, e.g., *Northern Natural Gas Co.*, 143 FERC ¶ 61,244 (2013); *Florida Gas Transmission Co., LLC*, 135 FERC ¶ 61,047 (2011); *Columbia Gas Transmission, LLC*, 134 FERC ¶ 61,196; *Northwest Pipeline Corp.*, 104 FERC ¶ 61,176, *reh'g denied*, 105 FERC ¶ 61,109 (2003).

¹³ The EA also addressed the environmental impacts of Eastern Shore's proposal to construct its White Oak Lateral Project in Docket Nos. CP15-18-000 and CP15-18-001. The Commission will address the White Oak Lateral Project in a separate order.

comments received in response to the NOI that are within the scope of an environmental analysis were addressed in the EA.¹⁴

33. The EA was issued for a 30-day comment period, placed into the record, and mailed to the interested parties on the project's environmental mailing list on April 25, 2016. We did not receive any comments on the EA related to the System Reliability Project.

34. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Eastern Shore's application, 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.

35. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁵

36. At a hearing held on July 21, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments submitted and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Eastern Shore to construct and operate the System Reliability Project, as described more fully in the application and in the body of this order.

¹⁴ The Engineering section of this order addresses concerns whether the Porter Road Loop is necessary for system reliability.

¹⁵ 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 it conflicts 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).

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

- (1) Eastern Shore'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) Eastern Shore's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;
- (3) Eastern Shore's compliance with the environmental conditions listed in the Appendix to this order.

(C) Eastern Shore 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 Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(D) Eastern Shore's request for a predetermination supporting rolled-in rate treatment for the costs associated with the System Reliability Project in Eastern Shore's next general NGA section 4 rate proceeding is granted, barring a significant change in circumstances, as discussed in the body of the order.

(E) The request for technical conference is denied.

(F) The late interventions are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

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

1. Eastern Shore shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) for the project and as identified in the EA, unless modified by the Order. Eastern Shore must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the projects. This authority shall allow:
 - a. the modification of conditions of the order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Eastern Shore shall file an affirmative statement with the Secretary for the project, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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 for each project shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Eastern Shore shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-

specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Eastern Shore 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 our Upland Erosion Control, Revegetation, and 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 certificate and before construction begins**, Eastern Shore shall file an Implementation Plan for the project with the Secretary for review and written approval by the Director of OEP. Eastern Shore must file revisions to the plans as schedules change. The plan shall identify:

- a. how Eastern Shore will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
 - b. how Eastern Shore will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Eastern Shore will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Eastern Shore will 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, Eastern Shore shall file updated status reports for the project with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Eastern Shore's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, and 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 the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Eastern Shore from other federal, state, or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of the project**, Eastern Shore shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Eastern Shore must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
 10. **Within 30 days of placing the authorized facilities in service**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the respective facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Eastern Shore has complied with or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 11. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and written approval of the Director of OEP, site-specific horizontal directional drill (HDD) crossing plans where this method is determined to be feasible and appropriate, and an HDD Inadvertent Surface Release Contingency Plan. The crossing plans shall detail the crossing and operational procedures as well as the responsibilities for the prevention, containment, and cleanup of any releases associated with the HDD(s).

12. **Prior to construction**, Eastern Shore shall file with the Secretary evidence of landowner concurrence with the site-specific residential construction plans for any residence within 10 feet of the proposed construction workspaces for the System Reliability Project.
13. Eastern Shore shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project, and restoration of the right-of-way. **Prior to construction of the project**, Eastern Shore shall mail the complaint procedures to each landowner whose property would be crossed.
 - a. In its letter to affected landowners, Eastern Shore shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they should call Eastern Shore's Hotline (the letter should indicate how soon to expect a response); and
 - (3) instruct the landowners that if they are still not satisfied with the response from Eastern Shore's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
 - b. In addition, Eastern Shore shall include in its weekly status report for the project a copy of a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and date of the call;
 - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - (3) a description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
14. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and written approval of the Director of OEP, an Unanticipated Discovery of Contamination Plan applicable to the System Reliability Project. The plan shall include identifying hazardous materials, testing, and disposing of the contaminated media according to appropriate state and federal regulations.

15. Eastern Shore **shall not begin construction** of the System Reliability Project facilities and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
- a. Eastern Shore files with the Secretary:
 - i. remaining cultural resources survey report(s) and addendum(s);
 - ii. site evaluation report(s) and avoidance/treatment plan(s), as required; and
 - iii. comments on the cultural resources reports, addendums and plans from the Delaware State Historical Preservation Office;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. Commission staff reviews and the OEP approves the cultural resources reports and plans, and notifies Eastern Shore 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.”**

16. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and approval by the Director of OEP, a Fugitive Dust Control Plan. The plan shall specify the precautions that Eastern Shore would take to minimize fugitive dust emissions from the Porter Road Loop and Dover Loop construction activities, including additional mitigation measures to control fugitive dust emissions of particulate matter with an aerodynamic diameter less than or equal to 2.5 microns. The plan shall clearly explain how Eastern Shore would implement measures, such as:
- a. watering the construction workspace and access roads;
 - b. providing measures to limit track-out onto the roads;
 - c. identifying the speed limit that Eastern Shore would enforce on unsurfaced roads;
 - d. covering open-bodied haul trucks, as appropriate;

- e. clarifying that the EI has the authority to determine if/when water or a palliative needs to be used for dust control; and
 - f. clarifying the individuals with the authority to stop work if the contractor does not comply with dust control measures.
17. **Prior to any HDD construction for the System Reliability Project**, Eastern Shore shall file with the Secretary an HDD noise analysis identifying the existing and projected noise levels at each noise sensitive area (NSA) within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed a day-night level (L_{dn}) of 55 A-weighted decibels (dBA) at any NSA, Eastern Shore shall file with the noise analysis a mitigation plan to reduce the projected noise levels for the review and written approval by the Director of OEP. During drilling operations, Eastern Shore shall implement the approved plan, monitor noise levels, include these noise levels in its weekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an L_{dn} of 55 dBA at the NSAs.
18. Eastern Shore shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Bridgeville Compressor Station in service. If a full load condition noise survey is not possible, Eastern Shore shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the Bridgeville Compressor Station under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at the nearby NSAs, Eastern Shore 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. Eastern Shore 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.
19. Eastern Shore shall conduct, with the well-owner's permission, pre- and post-construction testing of well yield and water quality for all private wells identified in table 10 of the EA. **Within 30 days of placing the pipeline facilities in service**, Eastern Shore shall file a report with the Secretary identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall include a discussion of any complaints concerning the well yield or quality and how each problem was resolved