

157 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP16-12-000

ORDER ISSUING CERTIFICATE

(Issued December 15, 2016)

1. On October 26, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate certain pipeline and compression facilities in Louisiana (Southwest Louisiana Supply Project). For the reasons discussed below, we will authorize Tennessee's proposal, subject to the conditions discussed herein.

I. Background and Proposal

2. Tennessee, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA.³ Tennessee owns and operates an approximately 12,000-mile-long pipeline system, which extends northeast from Texas, Louisiana, and the Gulf of Mexico, through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut. In regards to this the project, Tennessee's 800 Line extends from southwest Louisiana northeast to central Kentucky.

3. In order to provide an additional 295,000 dekatherms per day (Dth per day) of firm natural gas transportation service on its 800 Line for delivery to an existing interconnection with Cameron Interstate Pipeline, LLC (Cameron Pipeline) in Cameron

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2016).

³ 15 U.S.C. § 717a(6) (2012).

Parish, Louisiana, Tennessee requests authorization to construct and operate two lateral pipelines, five meter stations, and a compressor station, as well as replace a turbine engine at an existing compressor station in Louisiana. Specifically, Tennessee proposes to construct and operate:

- a. an approximately 2.4-mile-long, 30-inch-diameter lateral pipeline and appurtenant facilities in Madison Parish that would connect with the 800 Line;
 - b. an approximately 1.4-mile-long, 30-inch-diameter lateral pipeline and appurtenant facilities in Richland and Franklin Parishes that would connect with the 800 Line;
 - c. five meter stations in Franklin, Madison, and Richland Parishes connecting five interstate pipelines to the proposed laterals;⁴
 - d. a new bi-directional compressor station with a 15,900 horsepower (hp) Solar Mars T-16000 gas-fired turbine compressor unit in Franklin Parish (Compressor Station 836A); and
 - e. a 15,900 hp Solar Mars T-16000 gas-fired turbine compressor unit, which will replace an existing 13,400 hp Solar Mars T-14000 gas-fired turbine compressor unit at Compressor Station 827 in Rapides Parish.
4. Tennessee conducted an open season from July 15 through August 9, 2013.⁵ Prior to the open season, Tennessee entered into binding precedent agreements with Mitsubishi Corporation (Mitsubishi) and MMGS, Inc. (MMGS) (collectively, the project shippers) for 600,000 and 300,000 Dth per day, respectively, of firm transportation service for

⁴ The meter stations will provide interconnections with: Midcontinent Express Pipeline LLC; Gulf Crossing Company LLC; Enable Midstream Partners LP; Gulf South Pipeline Company LP; and ETC Tiger Pipeline, LLC.

⁵ In the open season, Tennessee offered up to 1,000,000 Dth per day of firm transportation service from Zone 4 receipt points located between Tennessee's Compressor Station 219 and mainline valve (MLV) 200, Zone 0 receipt points located between MLV 409A and Compressor Station 40, and points on Tennessee's 800 Line in Delhi/Perryville, Louisiana near MLV 837, to the delivery point at Tennessee's existing interconnection with Cameron Pipeline.

primary terms of at least 20 years.⁶ During the open season, Tennessee did not receive any qualifying bids for service. Tennessee also held a reverse open season and, on July 31, 2013, a shipper offered to turn back 137,500 Dth per day of service. Tennessee accepted the turn back offering and utilized this capacity in its planning and calculations in designing the facilities for the project.

5. The Southwest Louisiana Supply Project will allow Tennessee to provide an additional 295,000 Dth per day of firm natural gas transportation service on its 800 Line from interconnections with five interstate pipelines via the two proposed laterals to an existing interconnection with Cameron Pipeline, for subsequent delivery to Cameron LNG, LLC's (Cameron LNG) authorized natural gas liquefaction and export facility in Cameron Parish, Louisiana.

6. Tennessee states that it will provide the remaining 605,000 of the 900,000 Dth per day of the contracted-for service using existing, but unsubscribed, capacity available on the 800 Line and additional service capability which can be realized by performing modifications to certain facilities under section 2.55(a) and (b) of the Commission's regulations.⁷ Tennessee states that auxiliary construction work to be performed under section 2.55(a) includes construction and modifications to allow for operational flexibility at Compressor Station 823 in Jefferson Davis Parish, Louisiana, and for bi-directional flow at existing Compressor Stations 827 and 834 in Rapides and Franklin Parishes, Louisiana, respectively, and Compressor Station 847 in Yalobusha County, Mississippi.⁸ Under section 2.55(b), Tennessee states that it will replace certain deteriorated or obsolete gas scrubbers at Compressor Stations 834 and 847 with filter separators.⁹

7. Tennessee estimates the total cost facilities associated with the provision of project service to be approximately \$170,453,208. It proposes to use its currently effective rates under Rate Schedule FT-A as the maximum recourse rates for service on the project. Tennessee requests a predetermination that it can roll the costs of the project into its

⁶ Mitsubishi received foundation shipper status and MMGS received anchor shipper status.

⁷ 18 C.F.R. § 2.55(a), (b) (2016).

⁸ Tennessee Application at 9-10.

⁹ Tennessee included a complete list of the auxiliary and replacement in Exhibit Z-1 of its application.

general system rates in its next NGA section 4 general rate proceeding.¹⁰ Tennessee states that the two project shippers have elected to pay negotiated rates for firm transportation service on the project.

II. Notice, Interventions, Comments, and Protests

8. Notice of Tennessee's application was published in the *Federal Register* on November 16, 2015, with comments due November 30, 2015.¹¹ The parties listed in Appendix A 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.¹²

9. On January 14, 2016, Dana Pierce filed an untimely motion to intervene, which included comments regarding increases to electric rates. This project is not intended to serve an electric generation facility and thus, should not affect electric rate payers. Nevertheless, we will grant Ms. Pierce's late motion to intervene.¹³

10. On December 17, 2015, the Tennessee Customer Group¹⁴ filed a limited protest, expressing concerns about Tennessee's proposal to charge project shippers the system rates to recover fuel and electric compression costs, as opposed to charging incremental rates to recover these costs associated with the project. We will address the protest in the rates section of this order.

¹⁰ Tennessee Application at 14.

¹¹ 80 Fed. Reg. 70,771 (2015).

¹² 18 C.F.R. § 385.214(c) (2016).

¹³ 18 C.F.R. § 385.214(d) (2016).

¹⁴ The Tennessee Customer Group includes: Centerpoint Energy Resources Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; West Tennessee Public Utility District; Athens Utilities; City of Florence, Alabama; Hartselle Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities; and Sheffield Utilities.

III. Discussion

11. Since Tennessee's 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.¹⁵

A. Application of the Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁶ 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 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 adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

¹⁵ 15 U.S.C. §§ 717f(c), (e) (2012).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

14. We find that Tennessee's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. Tennessee proposes to charge its existing general system rates as the initial recourse rates for services utilizing the new capacity created by the project. As discussed below, Tennessee has demonstrated that the projected revenues will exceed the cost of service associated with the project's facilities. Subject to the conditions discussed in this order, we find that Tennessee's existing customers will not subsidize the project.

15. We also find that the proposed project will not degrade service to existing customers. In addition, there will be no adverse impact on any other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. Further, no pipeline company or their captive customers have protested the application.

16. Tennessee states that all the facilities it proposes to construct will be located on land that it owns, will acquire, or that is subject to permanent easements.¹⁷ Thus, we find that Tennessee has designed the Southwest Louisiana Supply Project to have minimal impacts on landowners and surrounding communities.

17. The Southwest Louisiana Supply Project will enable Tennessee to provide an additional 295,000 Dth per day of firm transportation service for the project shippers, which have signed 20-year precedent agreements for a total of 900,000 Dth per day of project service. Based on the benefits the project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Tennessee's proposal, as conditioned in this order.

B. Rates

1. Initial Recourse Rates

18. Noting that the subscribing project shippers have agreed to pay negotiated rates, Tennessee proposes to utilize its system reservation rates under Rate Schedule FT-A as its initial maximum recourse reservation rates for project service, as follows:¹⁸

¹⁷ Tennessee Application at 30. There have been no protests filed by directly-affected landowners.

¹⁸ Tennessee includes the costs of facilities to be constructed under section 2.55 in its rates, contending that those facilities are project-related because, without them, it

(continued ...)

| Primary Receipt Points | Primary Delivery Points | Contract Quantities (Dth per day) | Current FT-A Recourse Reservation Rates per Dth |
|------------------------|-------------------------|-----------------------------------|---|
| Zone 0/100 Line | Zone L/1 | 250,000 | \$11.5794 |
| Zone 1/800 Line | Zone L/1 | 550,000 | \$7.9962 |
| Zone 4/200 Line | Zone L/1 | 100,000 | \$18.5544 |

19. Tennessee calculated an illustrative cost-based incremental reservation rate designed to recover the costs associated with construction and operation of the facilities necessary to provide the incremental firm transportation service subscribed by project shippers which is lower than the applicable existing system rate.¹⁹ Commission policy requires that when an incremental rate is lower than the system rate, the system rate is used as the initial recourse rate for providing service.²⁰ Thus, we will approve Tennessee's FT-A system recourse reservation rates as initial rates for firm service.

20. Tennessee proposes to charge its system commodity rates under Rate Schedule FT-A as initial maximum recourse commodity rates for project service, as follows:

| Primary Receipts | Primary Deliveries | Contract Quantity (Dth per day) | Current FT-A Commodity Rates per Dth |
|------------------|--------------------|---------------------------------|--------------------------------------|
| Zone 0/100 Line | Zone L/1 | 250,000 | \$0.0115 |
| Zone 1/800 Line | Zone L/1 | 550,000 | \$0.0081 |
| Zone 4/200 Line | Zone L/1 | 100,000 | \$0.0205 |

would not be able to meet the full contractual commitments of the project shippers. Tennessee June 13, 2016 Data Response at 1.

¹⁹ Tennessee June 13, 2016 Data Response at Attachment 1 to DR4-003.

²⁰ See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160 (2015); *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 (2013).

21. Tennessee calculated an illustrative cost-supported incremental commodity rate designed to recover the costs associated with the facilities necessary to provide the incremental firm transportation service subscribed by project shippers.²¹ Commission policy requires that when an incremental rate is lower than the system rate, the system rate is used as the initial recourse rate for providing service. Thus, we approve the use of Tennessee's FT-A recourse commodity rates as initial commodity rates for service.

22. Tennessee proposes to charge the applicable general system rates under Rate Schedule IT for any interruptible service provided on the project. This proposal is approved as consistent with Commission policy requiring a pipeline to charge its system IT rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.²²

2. Fuel

23. Tennessee did not propose specific charges for fuel use, lost and unaccounted-for gas, or electric power costs associated with project transportation service. In its protest, the Tennessee Customer Group states that Tennessee did not provide an analysis showing what effect the project would have on the system fuel and compression costs if the project shippers are charged the system fuel and electric compression rates. The Tennessee Customer Group further requests that the Commission require Tennessee to provide adequate support for use of a system fuel rate for the project and that the Commission require the use of an incremental fuel rate if Tennessee cannot demonstrate that there will be no subsidization by existing shippers.

24. In response to a data request, Tennessee clarifies that it proposes to charge project shippers the general system fuel and electric power costs applicable to their transportation paths and compares its projected system fuel use percentage, including electric power costs expressed on a per Dth basis, before and after the project is placed in service, taking into consideration other planned infrastructure projects.²³ After placing the project in service, Tennessee projects a reduction in its average system fuel rate per 100 Dth-mile from 0.234 percent to 0.095 percent, which indicates that existing shippers will not subsidize fuel use and electric power costs associated with the proposed transportation

²¹ Tennessee June 13, 2016 Data Response at Attachment 1 to DR4-003.

²² *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 (2012); *Gulf South Pipeline, Co. LP*, 130 FERC ¶ 61,015 (2010); *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006).

²³ Tennessee June 23, 2016 Data Response at Attachment 1 to DR4-005 at 1.

service. Thus, we will approve Tennessee's use of its applicable system fuel and electric power costs rates for service utilizing the project capacity.

3. Predetermination of Rolled-in Rate Treatment

25. Tennessee proposes to roll the costs of the project facilities into its general system rates in its next general NGA section 4 rate proceeding. Tennessee asserts that rolled-in rate treatment is appropriate because revenues from the project at the agreed-upon negotiated transportation rates for the project shippers will exceed project costs. Specifically, based on the weighted average contract rates for the contract paths and volumes associated with the project, Tennessee estimates, as shown in Exhibit N of the application, that revenue will exceed the cost of service by approximately \$24.1 million in the first year of the proposed service, i.e., Tennessee projects the revenue to be \$56,629,000 and the cost of service to be \$32,514,000. Tennessee also estimates that revenue will exceed the cost of service by approximately \$75.4 million in the first three years of the proposed service, i.e., Tennessee projects the total to be \$169,887,000 and the total cost of service to be \$94,446,000.

26. To receive a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not 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 will exceed project costs. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA section 4 proceeding, we compare the cost of the project to the revenues generated using actual contract volumes and either the maximum recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.²⁴

27. Based on a review of the pleadings in this case, the Commission finds that Tennessee has properly calculated revenues for the project and that the project's revenues will exceed its costs. Thus, we will grant Tennessee's request for a predetermination 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.

4. Negotiated Rates

28. The project shippers have agreed to pay negotiated rates. Tennessee must file either the negotiated rate agreements or tariff records setting forth the essential terms of

²⁴ *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

the agreements in accordance with the Alternative Rate Policy Statement²⁵ and the Commission's negotiated rate policies.²⁶ This filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

5. Non-Conforming Agreements

29. Tennessee provides, in Exhibit I of the application, copies of the firm transportation agreements (FTAs) that will be executed by the project shippers.²⁷ Tennessee states that certain provisions of each FTA, described below, reflect differences between the language of the publicly filed FTAs and the *pro forma* transportation service agreement under Rate Schedule FT-A. Tennessee submits that these differences do not constitute material deviations, or if construed to be material deviations, are not unduly discriminatory because the differences reflect facts about the project and do not affect the quality of service. Tennessee requests that the Commission make an upfront determination here approving these provisions:²⁸

1. The FTAs contain "Whereas" clauses that describe the Cameron LNG Project, the precedent agreements, and the specific transactions between Tennessee and the project shippers, while the *pro forma* agreement does not.
2. Article II, Section 2.1, of the Mitsubishi FTA addresses regulatory authorization of the project facilities. Section 2.2 of the Mitsubishi and

²⁵ *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) (Alternative Rate Policy Statement).

²⁶ *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 (2006), *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²⁷ Tennessee filed the unexecuted FTAs publicly with certain commercial information, including creditworthiness provisions, redacted.

²⁸ Tennessee also identified as non-conforming the creditworthiness provisions contained in Article XVI to the FTAs. Tennessee redacted these provisions from the public version of the FTAs and, therefore, is not seeking an upfront determination from the Commission in the certificate order.

MMGS FTAs address the commencement dates of the FTAs, which are tied to the commencement dates of the project facilities and Cameron LNG's Trains 1, 2, and 3. Article II of the *pro forma* agreement does not contain this regulatory authorization or commencement date language.

3. Article IV of the FTAs indicates that Tennessee will construct the project facilities to provide transportation service for the project shippers. Article IV of the *pro forma* agreement contemplates that the facilities necessary to provide the transportation service for the shipper are already in place.
 4. Sections 6.1, 11.1, and 12.1 of the MMGS FTA and sections 6.1 and 12.1 of the Mitsubishi FTA have been modified, as compared to the *pro forma* agreement, to reflect the commencement date for the project. These provisions in the FTAs reflect the fact that Tennessee must construct the project facilities, and Cameron LNG must commence service, in order to provide service to the shippers.
 5. Article VII of both the Mitsubishi and MMGS FTAs were drafted based on outdated versions of Tennessee's tariff. The *pro forma* agreement correctly references Articles VII and VIII, respectively, of the tariff's General Terms & Conditions (GT&C).
 6. Article XV (section 15.5) of the MMGS FTA expressly provides that the FTA, when executed, shall supersede and cancel the MMGS precedent agreement, while the *pro forma* agreement contains no such provision.
30. Further, Tennessee states that the "Other Provisions" portion of Exhibit A to the FTAs provides extension rights to the project shippers. Tennessee notes that Mitsubishi, the foundation shipper, is provided a right to extend the primary term of its contract for two consecutive five-year periods at a formula rate described therein, as well as a contractual rollover right allowing Mitsubishi to make a one-time election to reduce its transportation quantity by up to 50 percent and extend the reduced transportation quantity for two consecutive five-year periods, subject to certain conditions, at a formula rate described therein. MMGS, the anchor shipper, is provided the right to extend the primary term of its contract for two consecutive five-year periods at the negotiated rate provided during the primary term. Tennessee asserts that these extension rights reflect the primary contractual benefits that were provided to the project shippers in order to encourage them to make binding commitments to the project, without which the project would not proceed. Tennessee also asserts that these provisions are not material deviations from its *pro forma* agreement, pointing out that Article XXXVI of the GT&C of its tariff permits it to negotiate extension rights with a shipper in Exhibit A to the shipper's gas transportation agreement.

31. We find that the above-described non-conforming provisions in the shippers' service agreements constitute material deviations from Tennessee's *pro forma* service agreement. 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 a project.²⁹ We find that the provisions identified by Tennessee above are non-conforming but are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.³⁰

32. At least 30 days, but not more than 60 days before providing service to the project shippers under a non-conforming agreement, Tennessee must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Tennessee's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.³¹ This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.³²

C. Environmental Analysis

33. On December 9, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the Federal Register³³ and mailed to interested parties including: federal, state, and local officials; agency

²⁹ See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219; *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

³⁰ See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123, at P 6 (2006); *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

³¹ 18 C.F.R. § 154.112 (2016).

³² 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 *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 (2015).

³³ 80 Fed. Reg. 77,621 (2015).

representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

34. In response to the NOI, the Commission received a letter from the Louisiana Department of Wildlife and Fisheries (LDWF), Office of Wildlife, requesting that Tennessee implement certain erosion/sediment control measures, dispose of forested vegetation cleared during construction, and mitigate impacts on fish and wildlife resources. In addition, the Choctaw Nation of Oklahoma and the Jena Band of Choctaw Indians requested maps and copies of the cultural resources report. Tennessee provided the maps and the cultural resources report to the tribes that requested them on March 8 and June 3, 2016, respectively.

35. To satisfy the requirements of the National Environmental Policy Act of 1969,³⁴ Commission staff prepared an Environmental Assessment (EA) for Tennessee's proposal. 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 concludes that impacts on wetlands, geology, soils, vegetation, and wildlife would be largely contained within or adjacent to the project workspace. Temporary impacts on noise and air quality, including fugitive dust and noise during construction activities, would largely be limited to areas around the immediate active construction area. All substantive comments received in response to the NOI were addressed in the EA.

36. The EA was issued for a 30-day comment period and placed into the public record on September 29, 2016. On October 19, 2016, the Commission received comments on the EA from LDWF, which generally reiterate its comments submitted in response to the NOI. On October 25, 2016, Tennessee provided a response to LDWF's comments. The comments on the EA are addressed below.

37. LDWF recommends that the permanent rights-of-way for the proposed laterals not exceed 30 feet in width within wetlands. As referenced in the EA, a 10-foot corridor may be routinely maintained within rights-of-way for pipelines within a wetland and trees located within 15 feet of such pipelines may be selectively cleared, in accordance with Tennessee's commitment in their Environmental Compliance Management Plan.³⁵

³⁴ 42 U.S.C. §§ 4321-4347 (2012).

³⁵ EA at 22; Tennessee Application at app. 1D.

38. LDWF comments that the Louisiana black bear may occur in the general project area. LDFW states that if construction is to be performed during the denning season (December through April), further consultation with LDWF will be necessary. As stated in the EA, Tennessee will minimize impacts on the Louisiana black bear and its habitat by avoiding vegetative clearing during the denning season.³⁶ Tennessee also began consultation with LDWF regarding the Louisiana black bear and will continue consultation in the event construction is to be performed during the denning season.³⁷

39. LDWF recommends that Tennessee implement adequate erosion/sediment control measures to ensure that no sediment or other activity related debris are allowed to enter any adjacent wetlands or waters. As stated in the EA, Tennessee will adhere to all erosion/sediment control measures in accordance with its Environmental Compliance Management Plan.³⁸

40. LDWF recommends that all forested vegetation cleared during construction activities be hauled to a non-wetland disposal location or chipped and spread on site in a manner that is beneficial to the surrounding environment. In its October 25, 2016 response, Tennessee confirmed that any materials cleared or excavated will be disposed of at licensed commercial disposal facilities in accordance with applicable laws or as agreed upon in landowner agreements.³⁹

41. LDWF recommends that if Tennessee constructs access roads through wetlands, that Tennessee install 24-inch-diameter culverts every 500 feet. LDWF further recommends that additional culverts should be installed at stream crossings and drainage features, and culverts should be maintained to ensure that the existing flow of surface water remains uncompromised. In its response, Tennessee indicates that it will not construct any new access roads of 500 feet or greater through wetlands, but agrees to this recommendation in the event that a new access road is required. Tennessee also concurs with LDWF's recommendations regarding additional culverts at stream crossings and drainage features.⁴⁰

³⁶ EA at 34.

³⁷ Tennessee October 25, 2016 Comments at 2.

³⁸ EA at 6.

³⁹ Tennessee October 25, 2016 Comments at 3.

⁴⁰ *Id.*

42. LDWF recommends that Tennessee develop a mitigation plan designed to offset impacts to fish and wildlife resources. Tennessee states that it has already corresponded with the LDWF regarding mitigation plans.⁴¹ In that correspondence, LDWF indicated that it would review the mitigation plan during its review for the U.S. Army Corps of Engineers Clean Water Act section 404 permit.

43. We have reviewed the information and analysis contained in the record, including the EA, concerning the project's potential environmental impacts. Based on the consideration of this information and the discussion above, we conclude that if constructed in accordance with Tennessee'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.

44. 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.⁴²

45. At a hearing held on December 15, 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,

⁴¹ Tennessee February 8, 2016 Response at Attachment 7.

⁴² See 15 U.S.C. § 717r(d) (2012) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that 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).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee authorizing it to construct and operate the Southwest Louisiana Supply Project, as described and conditioned herein, and as more fully described in the application.

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

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

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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

(4) execution of firm service agreements equal to the levels of service and in accordance with the terms of service represented in the precedent agreements prior to commencing construction.

(C) Tennessee's general system recourse rates for firm and interruptible transportation under Rate Schedules FT-A and IT, respectively, are approved as initial rates, as described above.

(D) Tennessee shall file, not less than 30 days and not more than 60 days, prior to the commencement of service on the project, executed copies of the non-conforming firm transportation agreements as part of its tariff, disclosing and reflecting all non-conforming language.

(E) Tennessee's request to utilize its system fuel and loss retention percentages and electric power cost rates is approved, as described in the body of this order.

(F) Tennessee shall file its negotiated rate agreements, or a tariff record describing the essential elements of the agreements, not less than 30 days and not more than 60 days prior to the date the project's facilities go into service.

(G) Tennessee's request for a predetermination supporting rolled-in rate treatment for the costs of the project in its next NGA general section 4 rate proceeding is granted.

(H) Tennessee 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 Tennessee. Tennessee shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(I) The untimely motion to intervene is granted.

(J) Tennessee Gas Customer Group's protest is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Interventions

Atmos Energy Corporation
Atmos Energy Marketing LLC
Consolidated Edison Company of New York Inc. and Orange and Rockland Utilities Inc.
Exelon Corporation
National Fuel Gas Distribution Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
NJR Energy Services Company
PSEG Energy Resources & Trade LLC
Tennessee Customer Group

Appendix B

Environmental Conditions

1. Tennessee 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. Tennessee 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 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**, Tennessee 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 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**, Tennessee 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.

Tennessee'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. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline and facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee 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 Tennessee's *Erosion Control, Revegetation & Maintenance Plan* and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all 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**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee 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 Tennessee 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 per spread, 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 instruction Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Tennessee 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 Tennessee'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 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 Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
8. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Tennessee 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 areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Tennessee 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 certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction at water body WBA002 located near MP1.2 at the Delhi South Lateral**, Tennessee shall file with the Secretary, for the review and written approval by the Director of OEP, a horizontal directional drill noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at any noise sensitive areas (NSAs). During drilling operations, Tennessee shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to **no more than a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at the NSAs**.
12. Tennessee shall file noise surveys with the Secretary **no later than 60 days** after placing the expanded Compressor Station 827 and the new Compressor Station 836A in service. If a full load condition noise survey is not possible, Tennessee shall provide an interim survey at the maximum possible horsepower load and

provide the full load survey **within six months**. If the noise attributable to the operation of all of the equipment at either compressor station, under interim or full horsepower load conditions, exceeds an L_{dn} of 55 dBA at any nearby NSAs, Tennessee shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. Tennessee 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**.