

127 FERC ¶ 61,162  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Texas Eastern Transmission, LP

Docket No. CP08-100-001

ORDER DENYING REHEARING

(Issued May 21, 2009)

1. On January 16, 2009, Emerald Coal Resources, L.P. (Emerald) filed a timely request for rehearing of the order issued in *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,342 (2008) (December 19 Order). The December 19 Order authorized Texas Eastern Transmission, LP (Texas Eastern) to add compression at two existing compressor stations in Pennsylvania. The project, known as the Northern Bridge Project, will provide up to 150,000 Dth per day of additional firm transportation capacity on Texas Eastern's system from a new interconnection with Rockies Express Pipeline, LLC (Rockies Express) at Clarington, Ohio to the Oakford/Delmont, Pennsylvania area.
2. For the reasons set forth below, we are denying Emerald's request for rehearing.

**Background**

3. The December 19 Order authorized Texas Eastern's proposal to increase the overall compression at its Holbrook and Uniontown Compressor Stations in Pennsylvania by 10,666 horsepower (hp) to provide capacity needed to transport new Rocky Mountain gas supplies on Texas Eastern's existing pipeline facilities between Clarington, Ohio and the Oakford/Delmont, Pennsylvania area.<sup>1</sup> Specifically, we authorized Texas Eastern to (i) install a new 13,333 hp compressor unit at its Holbrook Compressor Station in Greene County, Pennsylvania; (ii) uprate an existing compressor unit at Holbrook by 1,083 hp; (iii) abandon in place four compressor units totaling 5,400 hp at Holbrook; and (iv) uprate an existing compressor unit by 1,650 hp at its Uniontown Compressor Station in

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<sup>1</sup> Texas Eastern's pipeline facilities were constructed in the late 1940s and early 1950s.

Fayette County, Pennsylvania.<sup>2</sup> Texas Eastern explained that all construction activities will take place within the existing footprints of the Holbrook and Uniontown Compressor Stations. Texas Eastern stated that there will be no ground disturbance at the Uniontown Compressor Station. We found in the December 19 Order that the Northern Bridge Project will provide substantial benefits without any adverse impacts on shippers or other pipelines, and concluded that approval of the Northern Bridge Project was required by the public convenience and necessity.

4. Emerald filed a protest to Texas Eastern's proposal. Emerald mines coal in southwestern Pennsylvania, and currently has an application pending before the Pennsylvania Department of Environmental Protection (Pennsylvania DEP) to mine areas crossed by Texas Eastern's existing pipeline facilities through which the gas volumes made possible by the Northern Bridge Project will flow. Emerald contended that the Commission should not approve the Northern Bridge Project until Texas Eastern takes appropriate measures to address what Emerald characterized as known mining subsidence risks associated with these existing pipeline facilities. Unless mitigated, Emerald asserted, subsidence of existing pipelines could significantly reduce or even negate the proposed benefits of the Northern Bridge Project. In the alternative, Emerald urged that the Commission impose subsidence mitigation conditions similar to those recently adopted for the Rockies Express Project (REX Project).<sup>3</sup>

5. The December 19 Order found that the construction of Texas Eastern's compressor station upgrades will have no physical impact on Emerald's mining activities, or on Texas Eastern's existing pipeline system. We explained that, unlike the situation in the REX Project, which involved a new greenfield pipeline that will cross mining areas, Texas Eastern's project only involves adding compression at existing compressor stations to increase the capacity of existing pipeline infrastructure that has been in place and in service for many years. We also determined that the requirements imposed for the REX Project for new pipeline construction are not needed, are inappropriate for this project, and are outside the scope of this proceeding. Thus, the December 19 Order denied Emerald's protest.

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<sup>2</sup> The December 19 Order noted that, upon completion of the proposed installation, uprates, and abandonment, there will be a net increase of 9,016 hp of compression at Holbrook and a net increase of 1,650 hp at Uniontown for a total overall increase of 10,666 hp.

<sup>3</sup> See *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008), *order granting and denying requests for clarification and denying request for reconsideration*, 125 FERC ¶ 61,160 (2008) (*Rockies Express*).

**Procedural Issue**

6. Texas Eastern filed an answer to Emerald's request for rehearing on February 3, 2009. While the Commission's rules generally do not permit answers to requests for rehearing,<sup>4</sup> we may, for good cause shown, waive a rule.<sup>5</sup> We find good cause to accept Texas Eastern's answer because it provides information that will assist us in our decision-making process.

**Emerald's Request for Rehearing****Pipeline Subsidence**

7. Emerald contends that the Commission, in weighing whether the public interest requires approval of the Northern Bridge Project, failed to give adequate consideration to Emerald's claims regarding the potential for subsidence under Texas Eastern's existing pipeline facilities as the result of Emerald's planned coal mining operations in an area crossed by the pipeline. Emerald asserts that the Commission deferred, to the Pennsylvania DEP, subsidence issues regarding Texas Eastern's existing pipeline facilities that the Commission has the responsibility to address under the Natural Gas Act (NGA) and the National Environmental Policy Act of 1969 (NEPA). Emerald contends that the Commission should condition any certificate authorization to require Texas Eastern to address subsidence mitigation, as the Commission required in the REX Project proceeding.

**Commission Response**

8. Emerald largely renews earlier pipeline subsidence arguments that the Commission fully addressed and rejected in the December 19 Order. Emerald continues to advance an overly broad view of what constitutes the project under consideration in this proceeding, contending that the Commission's review of the proposal at hand should encompass a new examination of the existing pipelines through which the incremental volumes of natural gas will move.

9. Here, Texas Eastern has simply requested authorization to make adjustments at two of its existing compressor stations to increase the capacity of existing pipeline facilities. Texas Eastern does not propose to engage in any construction outside the confines of its existing compressor stations. Texas Eastern's proposed construction activities will have no physical effect on any existing Texas Eastern pipeline. Texas

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<sup>4</sup> See 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1) (2008).

<sup>5</sup> See 18 C.F.R. § 385.101(e) (2008).

Eastern will not make any physical changes to existing pipeline facilities and does not propose to change the maximum allowable operating pressure (MAOP) of any of its pipelines as part of the Northern Bridge Project.

10. Emerald raises no issues regarding Texas Eastern's proposed compression facilities. There are no mining operations planned beneath the Holbrook or Uniontown Compressor Stations, and as the Commission found in the December 19 Order, the construction of Texas Eastern's compressor station upgrades in the Northern Bridge Project will have no impact on Texas Eastern's existing pipeline facilities or on Emerald's mining activities. Further, any potential for subsidence of Texas Eastern's pipelines from future Emerald mining operations will not be affected by the Commission's decision on the proposed Northern Bridge Project.

11. For these reasons, we find, as the December 19 Order correctly explained, that issues relating to subsidence mitigation with respect to Texas Eastern's existing in-service facilities are not properly part of this proceeding.<sup>6</sup> Therefore, we need not address the subsidence issue raised here by Emerald.

12. We are not, moreover, improperly deferring any issues to the Pennsylvania DEP, as claimed by Emerald. The Pennsylvania DEP has the specific expertise and experience to interpret state and federal regulations involving mining subsidence prevention or control plans to be prepared by mine operators and, as we stated in the December 19 Order, any subsidence issues related to Texas Eastern's existing pipelines should be resolved through the Pennsylvania DEP's administrative process for pending mining permit applications or, if necessary, by a court of competent jurisdiction.<sup>7</sup>

13. The conditions that we applied in the REX proceeding are not appropriate for the Northern Bridge Project because, as we explained in the December 19 Order, the situations are inapposite. In the REX proceeding, we authorized Rockies Express to construct new pipeline facilities through active and proposed coal mining areas with known areas of present or potential ground instability resulting from mining operations. In accordance with its responsibilities under the NGA and NEPA, we required Rockies Express, in consultation with mining operators, to develop a mining subsidence plan and a construction and operation plan that would ensure the integrity of the pipeline and not compromise existing or future mining activities. Here, in contrast, no pipeline

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<sup>6</sup> *Citing Steckman Ridge, L.P.*, 123 FERC ¶ 61,248 (2008), *order denying rehearing*, 125 FERC ¶ 61,217 (2008), in which the Commission addressed the same issue in response to a protest from Emerald.

<sup>7</sup> *See Rockies Express*, 125 FERC ¶ 61,160 at P 11.

construction is involved. Further, the pipeline facilities to which Emerald argues that we should attach subsidence-related conditions will not be the subject of any structural alteration as a result of the Northern Bridge Project.

### **Cumulative Impacts**

14. Emerald contends that the Commission erred in not considering the long-term cumulative impacts associated with multiple connected actions in known active mining areas. In particular, Emerald avers that the Commission failed to identify the Northern Bridge Project and other Texas Eastern projects, including the TIME II Project<sup>8</sup> and the TEMAX/TIME III Projects,<sup>9</sup> as connected actions, thereby improperly dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact. Specifically, Emerald claims that the Northern Bridge and the TEMAX/TIME III Projects are interdependent and cannot or will not proceed unless other actions are taken previously or simultaneously. Emerald points out that the TEMAX/TIME III Projects involve further compression upgrades at the Holbrook and Uniontown Compressor Stations beyond those involved in the Northern Bridge Project, and states that the Northern Bridge Project must be completed before the capacity increases anticipated in the TEMAX/TIME III Projects can be achieved. Emerald asserts that the Commission “blindly” accepted Texas Eastern’s representation that the two projects are not connected, rather than conducting its own analysis.

### **Commission Response**

15. Contrary to Emerald’s claim, the Commission did consider the cumulative impact of other projects in the general project area. Specifically, in the environmental assessment (EA) and the December 19 Order, the Commission examined the potential for

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<sup>8</sup> Texas Eastern Incremental Area Expansion II Project

<sup>9</sup> Texas Eastern Market Area Crossing (TEMAX) Project and Texas Eastern Incremental Area Expansion III (TIME III) Project. At the time of the December 19 Order, the TEMAX and TIME III Projects were undergoing environmental review together as part of the Commission’s pre-filing process described at 18 C.F.R. § 157.21 (2008). On March 6, 2009, Texas Eastern filed a single application with the Commission, docketed as CP09-68-000, for authorization to construct both projects. In the application (and in the earlier request for permission to engage in the pre-filing process) Texas Eastern states that, although the TEMAX and TIME III Projects are themselves separate projects, it expected that the Commission would desire to evaluate them as a single set of facilities for NEPA purposes because they would be built together during the same construction season.

cumulative impacts regarding the TEMAX/TIME III Projects. The TEMAX/TIME III Projects involve the construction of new, replacement, and loop pipeline, and a net increase of 76,133 hp of compression at four compressor stations. The Commission found that the Northern Bridge Project and the TEMAX/TIME III Projects will add compression at Texas Eastern's Holbrook and Uniontown Compressor Stations, and thus will share the same compressor station sites, in part. However, at that point, the similarity ends. The Northern Bridge Project physically involves different compressor units from those involved in the TEMAX/TIME III Projects, and the TEMAX/TIME III Projects do not need the compression facilities from the Northern Bridge Project to go forward. The Northern Bridge and TEMAX/TIME III Projects can proceed regardless of whether or not the other is built. The Northern Bridge Project, moreover, involves no pipeline construction. As the EA pointed out, the Northern Bridge Project will affect only land on the existing compressor station property and will have no off-site environmental impacts. The TEMAX/TIME III Projects, on the other hand, require the construction of pipeline that loops existing pipeline and new greenfield pipeline located a considerable distance from the Holbrook and Uniontown Compressor Stations. Finally, the Commission stated that the environmental impacts associated with the TEMAX/TIME III Projects will be fully analyzed in the environmental review document that will be prepared for that project.

16. The shippers and the project timelines are also very different. As the result of separate open seasons, Texas Eastern has entered into contracts with a discrete group of shippers for each project. Texas Eastern anticipates beginning construction of the Northern Bridge Project in May 2009 so it can initiate service to its customers by November 1, 2009. In contrast, Texas Eastern hopes to begin construction of the TEMAX/TIME III Projects in December 2009 and commence service a year later, on November 1, 2010, for the 2010-2011 winter heating season. Thus, construction of the TEMAX/TIME III Projects would not even begin until after the North Bridge Project facilities are likely to be in service.

17. There is no indication that Texas Eastern has improperly segmented the Northern Bridge Project and the TEMAX/TIME III Projects to gain any advantage in the environmental review process. The Commission has conducted a thorough analysis that addresses the potential environmental impacts from the Northern Bridge Project and has adopted appropriate conditions to mitigate those impacts. There is no reason to delay the benefits expected from the Northern Bridge Project for consideration of impacts associated with the TEMAX/TIME III Projects. As the Commission has already stated, those impacts, including the impacts from any additional increase in compression at the Holbrook and Uniontown Compressor Stations, will be analyzed and appropriately addressed in the environmental review for the TEMAX/TIME III Projects.

18. The Commission authorized Texas Eastern's TIME II Project in an order issued June 8, 2007.<sup>10</sup> The Commission approved Texas Eastern's request to abandon by removal certain pipeline facilities in Ohio and Pennsylvania, and to replace and add to those facilities with various other pipeline and compression facilities across Ohio and Pennsylvania in two phases – the 2007 facilities and the 2008 facilities. The 2007 facilities were completed and placed in service in December 2007, and the 2008 facilities in November 2008. The only TIME II facilities overlapping or located in any proximity to the proposed Northern Bridge facilities consists of a compressor unit at the Uniontown Compressor Station. Although not specifically addressed in the December 19 Order, the TIME II Uniontown compressor unit was considered part of the existing Uniontown Compressor Station for purposes of the environmental analysis for the Northern Bridge Project.

19. The EA and December 19 Order also referred to two hypothetical projects despite the fact they were only in preliminary stages of development and had not been proposed to the Commission for review. The Commission noted, however, that as described thus far by their sponsors, they would primarily involve construction of pipeline facilities and have very different impacts from the Northern Bridge Project. Because these projects were not reasonably foreseeable and would not likely have significant common impacts, the Commission properly gave no further consideration to these possible future projects.

20. Thus, for the reasons discussed above, the Commission holds that the Northern Bridge Project is a distinct project, the aspects of which can appropriately be addressed separately from other projects.

The Commission orders:

Emerald's request for rehearing is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>10</sup> See *Texas Eastern Transmission LP*, 119 FERC ¶ 61,258 (2007).