136 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Tennessee Gas Pipeline Company Docket No. CP11-30-000

Dominion Transmission, Inc. Docket No. CP11-41-000

ORDER ISSUING CERTIFICATES AND
GRANTING ABANDONMENT AUTHORITY

(Issued September 15, 2011)

1. On November 12, 2010, in Docket No. CP11-30-000, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate its Northeast Supply Diversification (NSD) Project. The proposed project consists of 6.77 miles of pipeline and compression facilities to be located in northern Pennsylvania and western New York. Tennessee also proposes to lease 150,000 dekatherms per day (Dth/d) of transportation capacity from Dominion Transmission, Inc. (Dominion) for a minimum term of ten years.

2. In a companion application filed on November 19, 2010, in Docket No. CP11-41-000, Dominion requests authorization pursuant to section 7(b) of the NGA to abandon by lease 150,000 Dth/d of transportation capacity to Tennessee. Dominion also requests authorization under section 7(c) of the NGA to construct and operate its proposed Ellisburg to Craigs Project located in Wyoming and Livingston counties in New York, and Potter County, Pennsylvania. This project would create the capacity on Dominion's system to be leased to Tennessee.

3. For the reasons set forth below, we are granting the requested authorizations, subject to conditions.

I. Background

4. Tennessee and Dominion, corporations organized and existing under the laws of Delaware, are natural gas companies engaged in the business of transporting natural gas in interstate commerce. Tennessee's mainline transmission system extends northeast from primary sources of supply in Texas, Louisiana, and the Gulf of Mexico. Dominion

provides natural transportation services in Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia.

A. Reserved Capacity and Open Seasons

1. Tennessee's Reserved Capacity

5. Tennessee has reserved transportation capacity on its 200 Line and 300 Line that was not otherwise subscribed on a long-term basis. A portion of this reserved capacity was unsubscribed capacity posted on Tennessee's PASSKEY system, while the remainder was Expired Contract Capacity. Prior to reserving the Expired Contract Capacity, Tennessee held two open seasons on September 21, 2009 and July 12, 2010; no bids were received in either open season. Overall, Tennessee reserved the following capacity to be effective on November 1, 2012:

- 25,000 Dth/d from Station 321 to Station 313;
- 33,000 Dth/d from Station 313 to Station 219;
- 68,000 Dth/d from Station 219 to Main Line Valve 233;
- 150,000 Dth/d from Station 233 to Main Line Valve 230;
- 100,000 Dth/d from Main Line Valve 233 to Main Line Valve 266A-112; and
- 182,000 Dth/d on Line 313G-100.

2. Tennessee's Open Seasons

6. Tennessee held multiple open seasons for its NSD Project, including open seasons for its Marcellus to Leidy and Niagara (MLN) Project that was ultimately merged into the NSD Project since, in order to accommodate shipper requests, both projects would use some of the same facilities. Altogether, Tennessee held three non-binding open seasons for the NSD Project. Tennessee conducted the initial non-binding open season between November 4 and December 4, 2008, soliciting interest in two project paths. The first path would bring Gulf Coast, Appalachian, and Rockies supplies to New England and the second would bring Appalachian supplies to New York and New England. Tennessee received non-binding bids for a total of 1,590,000 Dth/d, comprised of 595,000 Dth/d for the first path and 995,000 Dth/d for the second path. Tennessee sought but received no requests from shippers offering turn-back capacity.

7. Tennessee narrowed the project scope to include only the first path and held a second non-binding open season between July 31 and August 19, 2009, soliciting interest

in 150,000 Dth/d. Tennessee received non-binding bids for 865,000 Dth/d. No shipper requested to turn-back capacity, and no agreements were ultimately entered into.

8. Tennessee again revised the contractual path for the NSD Project to include both the first path and the second path and held a third non-binding open season between September 21 and October 5, 2009, soliciting interest in 150,000 Dth/d. From this open season, Tennessee received 175,000 Dth/d of non-binding bids for the first path and 685,000 Dth/d for the second.[1]

9. After discussions with bidders from the third non-binding open season, Tennessee revised the project scope to include only the second path. Tennessee negotiated with several of the bidders and entered into an agreement with Cabot Oil & Gas Corporation (Cabot) on May 27, 2010, for 100,000 Dth/d of firm transportation service from the Appalachian area along Tennessee's 300 Line to markets in New England.

10. Tennessee also sought support for its proposed MLN Project that would transport gas from the Appalachian region along its 300 Line to markets in Niagara Falls and Aurora, New York, and Leidy, Pennsylvania. The first non-binding open season was held between February 16 and March 2, 2010, soliciting interest in 600,000 Dth/d and turn-back capacity. Tennessee received 1,135,000 Dth/d of non-binding bids and no requests for turn-back capacity.

11. After negotiations with parties participating in the MLN open season, Tennessee signed Anchor Shipper term Sheets with Anadarko Energy Services Company (Anadarko) and Seneca Resources Corporation (Seneca) on May 3, 2010, for 50,000 Dth/d each off firm transportation to Niagara Falls, New York. These agreements reflected the commercial terms and conditions necessary for Anadarko's and Seneca's commitment to participate in the MLN Project as anchor shippers.

12. Tennessee held a second open season for the MLN project between May 5 and May 19, 2010, soliciting interest in 320,000 Dth/d and offering equivalent terms and conditions as the anchor shipper agreements signed by Anadarko and Seneca. On June 17, 2010, after the second open season, Tennessee entered into binding precedent agreements with Anadarko and Seneca for 50,000 Dth/d each. Tennessee received a late additional qualifying bid from Anadarko for an additional 50,000 Dth/d, which Tennessee accepted pursuant to the terms of the binding open season. This late bid was

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[1] Tennessee did not solicit turn back of capacity as part of this open season. However, as noted above, Tennessee solicited turn-back capacity in the two prior open seasons and would have evaluated any turn-back offers received pursuant to the terms and conditions set out in those open seasons.

signed into agreement on July 13, 2010, and amended on September 15, 2010, and again on October 15, 2010. Anadarko does not have anchor shipper status under the terms of this second agreement.

13. After the NSD and MLN open seasons, Tennessee ultimately executed precedent agreements for firm transportation service with Anadarko and Seneca, as anchor shippers, on the MLN path and Cabot on the NSD path, for a total of 250,000 Dth/d of firm transportation service.[2] In each of the NSD and MLN open seasons, potential shippers were offered the opportunity to select either a cost-based recourse rate or a negotiated rate. The bidders selected negotiated rates, with a right to extend the 15-year primary term of the agreements for successive five-year terms at the negotiated rate, if a shipper provides written notice to Tennessee at least 14 months prior to the end of the primary term. Tennessee requests that if the Commission determines that some contractual provisions of the precedent agreements constitute material deviations from the *pro forma* service agreement, that no provisions be found unduly discriminatory.

14. On July 8, 2011, the precedent agreements between Tennessee and Anadarko were amended to transfer 32.5 percent of Anadarko's firm transportation service to Mitsui E&P USA, LLC (Mitsui). On July 13, 2011, Tennessee and Mitsui signed precedent agreements assigning 32.5 percent of Anadarko's transportation capacity to Mitsui. The terms and conditions of the precedent agreements between Tennessee and Mitsui are identical to the terms and conditions reflected in the precedent agreements between Tennessee and Anadarko.

B. Capacity Lease

15. On June 16, 2010, Tennessee and Dominion entered into a precedent agreement for a capacity lease under which Dominion will lease up to 150,000 Dth/d of new incremental firm transportation capacity on its system to Tennessee. Under the lease, Tennessee will use a primary receipt point at the existing Ellisburg Station in Potter County, Pennsylvania and a primary delivery point (Craigs) at a proposed meter station in Livingston County, New York. As described more fully below, Dominion proposes to create the capacity to be leased to Tennessee by replacing an existing pipeline with a larger diameter pipeline and adding new compression. Under the agreement, Tennessee will pay Dominion a fixed lease payment for a primary term of ten years, with Tennessee having the right to extend the lease for successive five-year terms at $737,000 per month,

[2] Tennessee Application – Exhibit I.

while also providing fuel gas.[3] Tennessee will use the leased capacity to provide open-access transportation service to shippers pursuant to its tariff.

C. Tennessee Facilities

16. Tennessee states that the proposed NSD Project will provide up to an additional 250,000 Dth/d of incremental capacity on its existing pipeline system from the Appalachian supply area to northeast markets. The installation of the proposed NSD Project facilities and its lease of firm capacity would allow Tennessee to transport natural gas: (1) westerly along its existing 300 Line (located in Pennsylvania and New Jersey), and (2) northerly along its existing 200 Line (located in New York and New England). On the 200 Line, Tennessee would use both its reserved existing capacity and 150,000 Dth/d of leased capacity from Dominion to transport additional supplies to its interconnections with TransCanada Pipelines Limited in Niagara Falls, New York and to delivery points in New England.

17. In addition to leasing capacity to provide the transportation service for the NSD Project shippers, Tennessee proposes to: (i) construct and operate a 6.77-mile-long, 30-inch-diameter pipeline loop (Loop 315) within and adjacent to its existing 300 Line right-of-way in Bradford and Tioga counties, Pennsylvania; (ii) install pipes, valves, and appurtenant facilities to make bidirectional its Compressor Station 230C and the East Aurora Meter Station on its Niagara Spur Line in western New York; (iii) install a new pig receiver facility at its Compressor Station 317; (iv) increase the capacity of the existing interconnection between its 200 Line and Dominion's Line 554/24 in Livingston County, New York by replacing an eight-inch tap with a 16-inch tap; and (v) install other appurtenant facilities. Tennessee states that the estimated total cost of its NSD Project is $56 million.

D. Dominion Facilities

18. To provide the additional capacity it would lease to Tennessee, Dominion proposes to construct its Ellisburg to Craigs Project consisting of: (i) a new 10,800 horsepower compressor station located near Silver Springs, New York (Silver Springs Compressor Station); (ii) a new metering and regulation facility at the interconnection of Dominion's and Tennessee's pipeline systems located in Livingston County, New York; (iii) the replacement of 2,875 feet of existing eight-inch diameter pipeline with 16-inch pipe on Dominion's Line 533; (iv) the replacement of two eight-inch side valve assemblies with 16-inch valve assemblies on Line 554/24; and (v) new pressure

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[3] Dominion explains that it will assess a fixed fuel retention rate of 1.7 percent on the volumes delivered to recover the quantity of natural gas required for fuel gas.

regulation facilities at Dominion's existing Caledonia metering and regulation station in Livingston County, New York and its State Line station in Potter County, Pennsylvania. Dominion states that the estimated total cost of its Ellisburg to Craigs Project is $45,723,849.

E. Proposed Rates

19. Tennessee proposes an incremental recourse rate under its existing Rate Schedule FT-A for the NSD Project. Tennessee designed a proposed incremental reservation recourse rate of $6.52 per Dth to recover the incremental costs of the project facilities plus the costs associated with the proposed Dominion lease. The incremental rate reflects an incremental reservation billing determinant of 250,000 Dth/d, an annual cost of service of $19,565,000, a cost of facilities of $56,044,849, an overall pre-tax rate of return of 15.3 percent,[4] a depreciation rate of 3.33 percent, and annual lease payments to Dominion of $8,760,000. Tennessee also proposes to assess project shippers the applicable Rate Schedule FT-A gas and electric fuel and lost-and-unaccounted-for charges set forth in Tennessee's tariff, as well as applicable fuel and lost-and-unaccounted-for charges that Tennessee must pay Dominion pursuant to the proposed lease. Tennessee proposes to charge its applicable general system rate under Rate Schedule IT for any interruptible service. While Tennessee has developed incremental recourse rates for the project, it states that all shippers have elected to pay negotiated rates.[5]

II. Notice, Interventions, Protests, and Motions

20. Notice of Tennessee's application in Docket No. CP11-30-000 was published in the *Federal Register* on November 24, 2010 (75 Fed. Reg. 74,705); and Dominion's application, in Docket No. CP11-41-000, was published on December 1, 2010 (75 Fed. Reg. 76,451).

21. Fifteen parties filed timely, unopposed motions to intervene in the Tennessee proceeding and 16 parties filed timely, unopposed motions to intervene in the Dominion

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[4] Tennessee bases the pre-tax rate of return on its October 30, 1996 settlement, approved by the Commission in Docket No. RP95-112-017. *See Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996).

[5] Tennessee executed two precedent agreements with Anadarko. The first provides for a monthly negotiated rate of $8.82 for 50,000 Dth/d. The second provides the same rate of $8.82 for 18,000 Dth/d and a discounted rate of $2.71 for 32,000 Dth/d.

proceeding.[6] These parties are identified in Appendix B of this order.[7] On December 16, 2010, Anadarko filed a late motion to intervene in the Tennessee proceeding. Anadarko has demonstrated its interest in this proceeding and shown that its participation will not delay or unfairly prejudice any parties to the proceeding. Accordingly, for good cause shown, we will grant Anadarko's untimely motion to intervene.[8]

22. The New York Farm Bureau, Inc., the Randall Family Trust, the New York State Office of Parks, Recreation and Historic Preservation (NYSOP), the State of New York Department of Agriculture and Markets (NYSDAM), Citizens for Responsible Energy Development (CRED), the Silver Lake Association, Inc., and local residents submitted comments on Dominion's plan to construct a new compressor station near Silver Springs, New York.[9] These comments are discussed in the environmental section of this order.

III. Discussion

23. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation, as well as the acquisition of capacity by lease, are subject to the requirements of section 7(c) of the NGA. Dominion's proposed abandonment of capacity by lease is subject to the requirements of section 7(b).

A. Certificate Policy Statement

24. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.[10] The Certificate Policy Statement established criteria for

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[6] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2011).

[7] On December 15, 2010, National Fuel Gas Supply Corporation (National Fuel) filed a motion to intervene and comments in the Tennessee proceeding. However, on February 25, 2011, National Fuel withdrew its submitted comments.

[8] 18 C.F.R. § 385.214(d) (2011).

[9] Although these comments were submitted late, in light of the early stage of this proceeding and the lack of prejudice to other parties, we accept these late-filed comments.

[10] *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).

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

25. 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 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.

Tennessee's Facilities

26. As noted, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Tennessee is proposing incremental rates to recover the costs associated with the NSD Project which, as discussed below, we find to be appropriate. Therefore, Tennessee will not be relying on subsidies from existing customers and its proposal satisfies the no-subsidization requirement of the Certificate Policy Statement.

27. Tennessee's existing customers should not experience any degradation of service or increase in rates as a result of the proposed project. The project will have no adverse impact on existing pipelines or their captive customers as the new facilities will be transporting new domestic sources of gas ensuring that the project will not replace existing customers' service on existing pipelines. Additionally, no pipeline company has protested Tennessee's application.

28. Tennessee has taken appropriate steps to minimize adverse impacts on landowners and the environment. The proposed pipeline facilities will loop an existing section of its pipeline paralleling Tennessee's existing pipelines, and the facilities will be constructed on land owned by Tennessee in or adjacent to its existing rights-of-way. Tennessee

states, moreover, that it proposes no increases in horsepower at its subject compressor stations further minimizing noise impacts to landowners.

29. Tennessee's proposed NSD Project, as conditioned, will benefit the public because it will provide an important new outlet to the interstate market for natural gas from historic supply areas currently experiencing increases in production. Also, Tennessee has executed precedent agreements for the proposed capacity. Therefore, consistent with the criteria discussed in the Certificate Policy Statement and section 7(c) of the NGA, we find that the benefits of the project will outweigh any potential adverse effects, and that the proposed project is required by the public convenience and necessity.[11]

Dominion's Facilities

30. Dominion's proposed project, as conditioned below, meets the threshold test that its existing customers not subsidize the project and also minimizes any adverse effects upon new and existing customers. The proposed project generates incremental capacity, all of which will be leased to Tennessee, and the proposed lease payments will fully support the cost of the proposed facilities during the term of the arrangement. Further, the project will have no adverse impact on existing pipelines or their captive customers as Tennessee will bear the costs of the lease agreement over the ten-year primary term and possible five-year extensions.

31. We are also satisfied that Dominion has taken appropriate steps to minimize adverse impacts on landowners. Dominion plans to use its existing rights-of-way, and temporary extra work space where required, for pipeline and side-valve replacement and will construct new gas measurement and regulation facilities on property it currently owns. Also, Dominion has minimized landowner impacts by locating the proposed compression facilities where it currently has pipeline operations as well as entering into a landowner agreement for the additional property required for the project.

32. The Ellisburg to Craigs Project is fully leased to Tennessee and Dominion has minimized impacts on the interests indentified in the Certificate Policy Statement. In view of the above findings, we conclude that Dominion's proposal is consistent with the Certificate Policy Statement and section 7(c) of the NGA, and that the public convenience and necessity requires approval of Dominion's proposal subject to the conditions set forth in this order.

[11] Consistent with our standard practice, we condition our certificate authorization so that construction cannot commence until after Tennessee executes contracts that reflect the levels and terms of service represented in its precedent agreements. *See, e.g., Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, at n.10 (2002).

B. Capacity Lease

33. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[12] To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[13]

34. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.[14] The lease agreement between Tennessee and Dominion satisfies these requirements.

35. First, the Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.[15] In addition, leases can result in administrative efficiencies for shippers.[16] Here, the proposed lease arrangement enables Tennessee's shippers to transport natural gas from the Appalachian supply area into northeast markets with the overall construction of fewer, less costly facilities than would have been needed without the lease. In addition, instead of executing separate contracts with two companies, the proposal allows Tennessee's shippers to enter into a single firm

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[12] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[13] *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

[14] *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order denying rehearing and granting clarification*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155, at P 4, 13–17 (2011).

[15] *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Texas Gas*, 113 FERC ¶ 61,185 at P 9; *Islander East*, 100 FERC ¶ 61,276 at P 70.

[16] *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998).

transportation contract, make one nomination, and transport gas from the production area to the New England, New York, and Canadian markets.

36. The second criterion in the Commission's consideration of capacity leases is whether the lease payments will be less than, or equal to, the lessor's firm transportation rates for comparable service. Tennessee will pay a fixed lease payment of $730,000 per month for 150,000 Dth/d of capacity for the 10-year primary term of the lease; this equates to a monthly lease demand charge of $4.87 per Dth/d,[17] which is higher than Dominion's currently-effected system reservation rate for firm transportation service. However, Dominion's total year-one cost of service associated with the expansion facilities is $9,028,330[18] and the resulting monthly incremental cost-based demand charge would be approximately $5.02 per Dth/d.[19] Since the capacity lease rate of $4.87 per Dth/d is less than the calculated $5.02 per Dth/d incremental rate for firm service on the facilities, we find that the second prong of the test is met.

37. With respect to the third prong of the test, we find that the lease arrangement will not adversely affect Tennessee's or Dominion's existing customers. Tennessee's proposed lease of capacity will use the capacity created by new facilities certificated for Dominion in this proceeding. Therefore, the quality of service Dominion currently provides to its existing customers will not be adversely affected by the lease. Tennessee has designed an incremental firm transportation rate, which includes the lease payments to Dominion, to recover the costs of the lease capacity from only the project shippers. In addition, each project shipper will pay the fixed fuel retention rate of 1.70 percent assessed by Dominion on the leased capacity and Tennessee's applicable fuel rate. The proposed lease fuel rate is less than Dominion's currently effective 2.85 percent system fuel rate because project shippers will only use capacity located between specific primary receipt and delivery points and will not access the remainder of Dominion's system.

38. In addition, Dominion will be fully at-risk for the cost of the Dominion facilities authorized in this proceeding. During the term of the lease with Tennessee, Dominion cannot reflect in its system rate the incremental costs associated with the leased capacity. Therefore, there should be no subsidization of the leased capacity by Dominion's customers.

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[17] The monthly lease demand charge was calculated as follows: $730,000 divided by 150,000 Dth/d equals $4.87 per Dth/d.

[18] Dominion Application – Exhibit P.

[19] The monthly cost-based demand charge was calculated as follows: $9,028,330 divided by the product of 150,000 Dth/d multiplied by 12 months equals $5.02 per Dth/d.

39. Based on the benefits the proposed lease will provide to the market and the lack of adverse effects on existing customers, we find that the public convenience and necessity requires approval of the proposed lease agreement.

C. <u>Tennessee's Precedent Agreements</u>

40. The executed precedent agreements filed by Tennessee evidence firm contractual support for the project and reflect the contractual incentives necessary for the shippers to make binding commitments to the project.[20] According to Tennessee, the precedent agreements contain contractual provisions that deviate from the *pro forma* Rate Schedule FT-A transportation service agreement contained in Tennessee's tariff. Specifically, Tennessee's agreements with Anadarko, Seneca, as anchor shippers, and Cabot: (1) guarantee that capacity proration will not apply to these shippers if Tennessee oversubscribes the project; (2) provides the respective negotiated rates that will apply to certain segmented quantities, point amendments, and secondary points; and (3) affords each shipper the right to extend the 15-year primary term for successive five-year terms at the negotiated rate, subject to 14-months prior written notice before the end of the primary or extended terms, as applicable.[21] Tennessee agreed to these provisions in exchange for the shippers' long-term commitment to the project, and Tennessee claims that absent these contractual commitments, the shippers would not have subscribed to the project. Due to the shippers' unique status as project sponsors, Tennessee states that none of the identified provisions create the risk of undue discrimination. Tennessee requests a determination from the Commission that even if some contractual provisions could be construed to constitute a material deviation from the *pro forma* service agreement, no provision of the precedent agreements is unduly discriminatory.

41. In addition to the non-conforming provisions identified in the precedent agreements discussed above, Tennessee states there are also certain differences between each shipper's proposed firm transportation agreement and Tennessee's *pro forma*

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[20] Tennessee Application section VII.

[21] Tennessee states that by virtue of committing to firm transportation quantities of 50,000 Dth/d for a term of 15 years in their respective June 17, 2010 precedent agreements, Anadarko and Seneca qualify as "anchor shippers" for the project. Cabot, however, does not qualify, since Tennessee did not offer anchor shipper status as part of the non-binding open season conducted when Cabot committed to the project.

service agreement.[22] According to Tennessee, these deviations are not material, but simply reflect certain facts unique to the project and the fact that it cannot provide the services under the firm transportation agreements until it receives the necessary authorizations and constructs the project facilities.

42. As required by the Commission's regulations, Tennessee states it intends to file the firm transportation agreements and negotiated/discounted rate agreements and identify any material deviations or non-conforming provisions in each agreement. However, Tennessee requests the Commission address the potentially non-conforming provisions in this proceeding to forgo revisiting any issues raised by these agreements after Tennessee incorporates the subject provisions into executed service agreements filed with the Commission.

43. The Commission finds that the incorporation of non-conforming provisions in the shippers' service agreements constitutes material deviations from Tennessee's *pro forma* service agreement.[23] However, in other proceedings, the Commission has 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.[24] We find the non-conforming provisions identified by Tennessee 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.[25] As discussed further below, when Tennessee files its non-conforming service agreements, we require Tennessee to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

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[22] Tennessee submitted the proposed firm transportation agreements and negotiated/discounted rate letter agreements as Exhibits A and B to the precedent agreements.

[23] Tennessee Application section VII.

[24] *See, e.g., Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008) and *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

[25] *See, e.g., Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at 62,345 (2002).

44. Tennessee must file at least 60 days before the in-service date of the proposed facilities, an executed copy of each non-conforming agreement reflecting all non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.[26] In addition, the Commission emphasizes that the above determinations relate only to those items as described by Tennessee in section VII of its application and not to the entirety of the precedent agreements or the language contained in the precedent agreements.

D. Rates

45. The Commission finds that Tennessee's proposed incremental reservation recourse rate is supported by the estimated costs. In addition, we believe that Tennessee's proposal to develop an incremental rate for this project is appropriate since the incremental recourse rate is higher than its currently effective charge for general system transportation under Rate Schedule FT-A. Thus, we will approve Tennessee's proposed incremental maximum rate for the project. Because we have found incremental rates appropriate for the project, if, in the future, Tennessee seeks to roll-in the costs associated with the expansion, it will have to demonstrate that such a change in pricing will not result in existing customers subsidizing the expansion.

E. Environmental Analysis

46. On December 30, 2010, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Northeast Supply Diversification Project and the Ellisburg to Craigs Project and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

47. We received comments in response to the NOI from the Pennsylvania Game Commission (PAGC); the Pennsylvania Department of Conservation and Natural Resources (PADCNR); the Pennsylvania Department of Environmental Protection (PADEP); the NYSOP; the New York Farm Bureau, Inc.; the NYSDAM; the New York State Historic Preservation Office (SHPO); the National Park Service (NPS); CRED; the Randall Family Trust; the Silver Lake Association, Inc.; and numerous local residents in the project vicinity. The majority of the comments relate to the potential impacts of Dominion's proposed Silver Springs Compressor Station. The resource agencies in

[26] 18 C.F.R. § 154.112 (2011).

Pennsylvania commented on the state-listed species and expressed concerns associated with soil and groundwater contamination.

48. To satisfy the requirements of the National Environmental Policy Act, Commission staff prepared an environmental assessment (EA) for Tennessee's NSD Project and Dominion's Ellisburg to Craigs Project. The NYSDAM participated in the preparation of the EA as a cooperating agency. 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, and alternatives. As summarized below, all substantive comments received in response to the NOI were addressed in the EA.

49. The PAGC submitted scoping comments regarding two bat species of special concern, the silver-haired bat and the northern myotis, and recommended that Tennessee conduct tree clearing along Loop 315 between November 1st and March 31st. Tennessee has agreed to implement this timing restriction to avoid impacts on these species. The EA discussed this mitigation and concluded that Tennessee's project will not impact these bat species.

50. The PADCNR submitted scoping comments regarding a state-listed rare plant species that potentially occurs along Tennessee's proposed Loop 315. As discussed in the EA, this species was not identified in biological surveys conducted in 2010; however, Tennessee has committed to additional surveys prior to construction for this species to address the PADCNR's concern.

51. The PADEP submitted scoping comments regarding waste disposal, the handling of contaminated soil or groundwater, and identified permits that would be required. As discussed in the EA, Tennessee and Dominion would follow their respective Spill Prevention, Containment, and Control Plans (SPCC Plans) that contain measures for the prevention and clean up of any spills that may occur during construction or operation of the projects. In addition, the EA concluded that the projects are not likely to disturb contaminated sediments or encounter contaminated groundwater. The EA also lists the federal and state permits the companies must obtain to construct their respective projects.

52. The NYSOP submitted comments regarding potential impacts on wildlife, as well as visual and noise impacts on Silver Lake State Park, which is located adjacent to Dominion's proposed compressor station site. Numerous local residents and landowners, CRED, and the Silver Lake Association provided scoping comments regarding the proposed location for the compressor station site. The EA concluded that the compressor station will not significantly impact wildlife, water quality, recreation, property values, or the local noise environment, and will represent only a slight increase in risk to the nearby public. The EA also concluded that the Silver Springs Compressor Station will not have a significant visual impact and recommended that Dominion file its proposed visual

screening plan to ensure that Dominion minimizes impacts on the viewshed. We are attaching staff recommendation as environmental condition 14.

53. The landowner of the proposed Silver Springs Compressor Station site initially commented on the potential impacts of the compressor station on the agricultural use of the property and the landowner's future use of the property. As discussed in the EA, this landowner subsequently reached a mutually acceptable agreement with Dominion for the purchase of the property.

54. The New York Farm Bureau commented on the potential impacts on agricultural land at the proposed Silver Springs Compressor Station site and Dominion's use of eminent domain for acquiring the land to build this facility. The EA concluded that the amount of agricultural land that would be permanently impacted by construction of the facility has been minimized as much as possible (the facility is co-located with an existing aboveground facility owned by Dominion). In addition, Dominion's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) contains measures that would minimize the potential impacts on agricultural land temporarily impacted by construction of the compressor station. As stated above, an agreement with the landowner of this property has been reached; thus, Dominion would not acquire this property by the use of eminent domain.

55. The NYSDAM submitted general scoping comments regarding impacts on agricultural land from the proposed Silver Springs Compressor Station location and alternatives. As previously mentioned, the NYSDAM participated as a cooperating agency and its concerns were incorporated into the appropriate sections of the EA.

56. The NPS commented during the scoping period that portions of the North Country National Scenic Trail are located in Erie and Livingston counties, New York. The EA concluded that this trail is located approximately 7.5 miles south of the Silver Springs Compressor Station site; therefore, the projects would not impact this or any other national trail.

57. The EA was issued for a 30-day comment period and placed into the public record on June 30, 2011. The Commission received comments on the EA from the U.S. Fish and Wildlife Service (FWS), the Seneca Nation of Indians, CRED, and from both Dominion and Tennessee.

58. The FWS commented that it did not have a record of endangered species consultation for Dominion's project on the date indicated in the EA. Dominion completed a review of the Pennsylvania Natural Diversity Inventory (PNDI) database, which found that there are no federally listed species in the project area. In addition, the EA concluded that the project would have no effect on federally listed species. FERC staff provided documentation of Dominion's PNDI review to the FWS via email on July 25, 2011. The FWS indicated that the PNDI review is only valid for one year and

that the submitted PNDI review expired. On August 10, 2011, Dominion filed a response documenting an updated review of the PNDI database. No new information is included that would change the "no effect" determination in the EA.

59. The FWS recommended that temporary erosion controls be used not only in wetland areas, but in upland areas also. In this regard, we note that both Dominion's and Tennessee's Upland Erosion Control, Revegetation, and Maintenance Plans (Plans) described in the EA already require that temporary erosion control devices be used in upland areas.

60. The FWS recommended that rather than citing examples of "typical" erosion control devices, the EA should specify the exact types of erosion control to be used for the projects. The EA provides a general description of typical pipeline construction procedures based on Tennessee's and Dominion's Plans, which allow for the use of different types of materials for erosion control. The exact erosion control devices will be determined based on site-specific conditions at the time of construction as well as the requirements of state or local permitting agencies.

61. The FWS questioned the rationale for the road crossing methods proposed by Tennessee for Loop 315. As discussed in the EA, crossing methods depend on the type of road being crossed (gravel, paved, etc.) and traffic considerations. Tennessee will be required to obtain a permit for each specific crossing from the Pennsylvania Department of Transportation for crossing publicly maintained roads.

62. The FWS commented on the impacts on wildlife from fences that may be installed around the proposed aboveground facilities. However, all of the aboveground facilities proposed as part of the projects are modifications to existing facilities or are located adjacent to existing facilities, and all of these facilities are currently surrounded by fencing. Therefore, the EA concluded that the aboveground facilities associated with Dominion's and Tennessee's projects will not have a significant impact on wildlife.

63. The FWS requested some clarification regarding temporary workspaces and requested that the frequency of vegetation clearing and methods used for vegetation clearing during project operation be stated in the EA. We clarify that temporary workspaces will be cleared of vegetation and Dominion's and Tennessee's Plans apply to both the pipeline right-of-way and any temporary workspace. Currently, Tennessee has committed to construction tree clearing restrictions, which will apply to both temporary workspaces and the construction right-of-way. Dominion, however, has not agreed to implement any vegetation clearing restrictions for its project during construction. Yet, we note that Dominion's and Tennessee's Plans restrict routine vegetation clearing of the right-of-way during project operation within the bird nesting season (April 15th through August 1st). Further, vegetation clearing during project operation would not occur more than every three years. The specific methods to be used for vegetation clearing are not

specified. The EA concluded that neither project would have a significant impact on vegetation.

64. The FWS commented that the EA does not clearly define the timeline for long-term and short-term impacts on migratory bird habitat. As stated in the EA, short-term impacts typically include the restoration of habitats containing herbaceous and shrub vegetation as these habitats typically take several years to recover. On the other hand, forest impacts would be considered a long-term impact as they take 30 to 50 years to recover.

65. The FWS also stressed that even though Dominion's Line 533 would require a minimal (about 0.1 acre) amount of clearing of suitable migratory bird habitat, the possibility of killing migratory birds still exists. Thus, the FWS commented that Dominion should conduct vegetation clearing from November 1st to March 31st to avoid impacts on nesting migratory birds. Dominion's stated plan is to begin construction in March 2012, which would result in vegetation clearing outside of the nesting season for migratory birds.

66. The FWS also commented that high quality habitat for tree nesting birds would be impacted by Tennessee's Loop 315. As stated in the EA, Loop 315 is entirely adjacent to the existing 300 Line right-of-way where no high quality habitat (important bird areas, habitat for species of concern, or unfragmented tracts of forest) was identified. As Tennessee has adopted a timing restriction for tree clearing of November 1st through March 31st, the EA concluded that there would be no significant or long-term impacts on migratory birds for Tennessee's NSD Project.

67. The Seneca Nation of Indians submitted comments stating that the projects would have no effect on historic properties.

68. CRED submitted comments similar to its scoping comments concerning noise, impacts on the Silver Lake State Park and the Silver Lake Watershed, alternative possible sites for the Silver Springs Compressor Station, and safety. One of CRED's concerns regarded the risk of spills and/or gas leaks from the proposed compressor station. As stated in the EA, impacts on the Silver Lake Watershed would be adequately minimized by the implementation of Dominion's SPCC Plan and the preventative measures contained in Dominion's Wetland and Waterbody Construction and Mitigation Procedures (Procedures), such as using secondary containment structures and maintaining spill response supplies at the facilities during construction and operation.

69. CRED also commented that a site west of the proposed site (Alternative #3 in the EA) should be utilized for the Silver Springs Compressor Station. The EA concluded that this alternate site was not environmentally preferable because it would require the construction of additional pipelines and a new permanent access road, would result in

greater impacts on waterbodies and wetlands, and because it has more noise-sensitive areas within one mile than the proposed site.

70. CRED also expressed concern with the Silver Springs Compressor Station's impact on noise and safety in the project area. CRED states that Dominion should comply with the NYSDEC's and/or World Health Organization's guidelines and believes that the noise data collected by Dominion was flawed. The NYSDEC maintains noise guidelines; however, it does not maintain enforceable noise regulations. Environmental condition 14 of this Order is enforceable by this Commission. Although we encourage Dominion to follow state and/or local guidelines, in their absence, FERC's noise regulations apply. We have reviewed the information provided by CRED and conclude that Dominion's noise consultant obtained the noise readings properly. In addition, environmental condition 14 requires Dominion to file a post-construction noise survey while the Silver Springs Compressor Station is operating at full load to ensure that the station meets our criterion of a day-night level of 55 A-weighted decibels at every noise-sensitive area.

71. CRED further expressed concern regarding strong odors being released into the air as a result of natural gas venting (blowdowns) and potential explosions at the station. Natural gas is odorless and colorless. Odorants, which have a strong smell and usually consists of thiols (also referred to as mercaptan), are sometimes added to natural gas streams as a detection measure in the event of a natural gas leak. The natural gas that would flow through the Silver Springs Compressor Station would not contain odorant and blowdowns at the facility will not result in the release of strong odors. As stated in the EA, the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration maintains safety standards in 49 C.F.R. Part 192, which Dominion must comply with. Such regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. We believe that these regulations will ensure the safe operation of the compressor station and will facilitate immediate responses in the event of an emergency.

72. In its comments on the EA, Dominion clarified that it will obtain water for hydrostatic testing at the proposed Silver Springs Compressor Station from a public access point on Silver Lake, not from a municipal source as stated in the EA. Prior to any use of this water source, Dominion will need to receive all necessary permits pertaining to hydrostatic testing from the NYSDEC. If Dominion is able to obtain the required state approvals to use Silver Lake as a water source, we conclude that the protective measures in Dominion's Procedures regarding the withdrawal of hydrostatic test water will adequately protect aquatic resources and water quality within the lake. Dominion also provided other project updates and minor corrections and clarifications; Tennessee's comments on the EA likewise included certain updates and clarifications. None of these changed the analysis or conclusions presented in the EA.

73. Dominion responded to additional recommended mitigation measures requested by the NYSDAM for construction in the agricultural lands that were listed in section B of the EA. Dominion has agreed to incorporate these mitigation measures in agricultural areas, such as by providing an agricultural inspector to oversee construction and restoration, and following the NYSDAM's Pipeline Construction Guidelines and Lime, Seed, and Fertilizer Guidelines, where feasible.

74. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of Tennessee's and Dominion's projects. Based on this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Tennessee's and Dominion's applications and supplements, and with the environmental conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

75. 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.[27]

IV. Conclusion

76. At a hearing held on September 15, 2011, 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,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, install, and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

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[27] *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d. Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990).

(B) The certificate authority in Ordering Paragraph (A) shall be conditioned on the following:

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

(2) Tennessee's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;

(3) Tennessee's compliance with the environmental conditions listed in the appendix to this Order; and

(4) Tennessee's executing firm service agreements equal to the level of service represented in its precedent agreements with its customers for service prior to construction.

(C) A certificate of public convenience and necessity is issued to Dominion pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, install, and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

(D) The certificate authority in Ordering Paragraph (C) shall be conditioned on the following:

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

(2) Dominion's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;

(3) Dominion's compliance with the environmental conditions listed in the appendix to this Order; and

(E) Authority is granted to Dominion to abandon by lease the capacity described in the body of this order to Tennessee.

(F) Dominion is required to maintain proper accounting treatment for the transportation capacity lease agreement with Tennessee, as directed herein.

(G) A certificate of public convenience and necessity is issued to Tennessee authorizing it to lease the subject capacity from Dominion, as described and conditioned herein.

(H) At least 60 days but not more than 90 days prior to commencing expansion service, Tennessee must file actual tariff records setting forth its incremental recourse rates.

(I) Anadarko Energy Services Company's late motion to intervene, in Docket No. CP11-30-000, is granted.

(J) Tennessee and Dominion shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance for their respective projects identified by other federal, state, or local agencies on the same day that such agency notifies Tennessee or Dominion. Tennessee and Dominion shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

<u>Appendix A</u>

Environmental Conditions

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

1. Tennessee Gas Pipeline Company (Tennessee) and Dominion Transmission Inc. (Dominion) shall follow the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Tennessee and Dominion must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);

   b. justify each modification relative to site-specific conditions;

   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and

   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during 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**, Tennessee and Dominion shall each file an affirmative statement with the Secretary, 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 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**, Tennessee and Dominion shall each 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.

   Tennessee's and Dominion's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Tennessee's and Dominion's right of eminent domain granted under NGA section 7(h) does not authorize them to increase the size of their 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. Tennessee and Dominion shall each 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, 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 document landowner approval, describe the existing land use/cover type, describe whether any cultural resources or federally listed threatened or endangered species would be affected, and describe 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 respective requirement does not apply to extra workspace allowed by Dominion's and Tennessee's *Upland Erosion Control, Revegetation, and Maintenance Plans* 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**, Tennessee and Dominion shall each file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee and Dominion must file revisions to their respective plans as schedules change. The plans shall identify:

a. how the company 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 the company 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 the company 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 (if known) and specific portion of the company's organization having responsibility for compliance;

g. the procedures (including use of contract penalties) the company 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 their respective Implementation Plans, Tennessee and Dominion shall each file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. an update on efforts to obtain the necessary federal authorizations;

b. the construction status of the projects, 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 the company from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's and Dominion's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of their respective project facilities**, Tennessee and Dominion shall each file with the Secretary documentation that it has

received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. Tennessee and Dominion must receive written authorization from the Director of OEP **before placing their respective projects 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 their respective authorized facilities in service**, Tennessee and Dominion shall each 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 the company 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 of Loop 315,** Tennessee shall file with the Secretary for review and written approval of the Director of OEP evidence of the appropriate landowner concurrence with the site-specific residential construction plans at mileposts 3.35 and 3.50.

12. **Prior to construction of Loop 315**, Tennessee shall file with the Secretary for the review and written approval of the Director of OEP, a plan to reduce tree clearing on each parcel of land enrolled in the Clean and Green Program that would be crossed by Loop 315 as necessary to ensure the property remains eligible for the program. In the event Tennessee is not able to avoid disqualifying a property from the program, Tennessee shall describe how it would compensate the affected landowner.

13. **Prior to construction of the Ellisburg to Craigs Project**, Dominion shall file its visual screening plan for the Silver Springs Compressor Station with the Secretary for review and approval by the Director of the OEP. The plan shall at a minimum, show the locations of facility components, roads, parking areas, and include a description of the types and quantities of vegetation screening to be planted. The plan shall also describe how Dominion's building design is consistent with the rural agricultural landscape.

14. Dominion shall make all reasonable efforts to ensure its predicted noise levels from the Silver Springs Compressor Station are not exceeded at nearby noise sensitive areas and file a noise survey showing this with the Secretary **no later than 60 days** after placing the Silver Springs Compressor Station in service. However, if the noise attributable to the operation of the Silver Springs Compressor Station at full load exceeds a day-night sound level of 55 A-weighted decibels at any of the nearby noise sensitive areas, Dominion shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Dominion shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

15. Tennessee shall **not begin construction** of facilities and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

    a. Tennessee files with the Secretary:

        (1) cultural resources survey reports for the previously surveyed portions of the project;

        (2) site evaluation reports and avoidance/treatment plans, as required; and

        (3) comments on the cultural resources reports and plans from the Pennsylvania State Historic Preservation Office.

    b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and

    c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans and notifies Tennessee 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**."

Appendix B

Interventions

Docket Nos. CP11-30-000 and CP11-41-000

Cabot Oil & Gas Corporation
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.
Dominion Transmission, Inc.
Inergy Midstream, LLC
National Fuel Gas Distribution Corporation
National Fuel Gas Supply Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
New York State Electric & Gas Corporation
Piedmont Natural Gas Company, Inc.
PSEG Energy Resources & Trade LLC
ProLiance Energy, LLC
Repsol Energy North America Corporation
Statoil Natural Gas LLC
UGI Distribution Companies

Docket No. CP11-41-000

Anadarko Energy Services Company
Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works
Independent Oil & Gas Association of West Virginia, Inc.
Inergy Midstream, LLC
National Fuel Gas Distribution Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
New York State Electric & Gas Corporation together with Rochester Gas & Electric Corporation
New York State Office of Parks, Recreation and Historic Preservation
PECO Energy Company
Piedmont Natural Gas Company, Inc.
PSEG Energy Resources & Trade LLC
Randall Family Trust
Statoil Natural Gas LLC
Tennessee Gas Pipeline Company