

149 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP

Docket No. CP14-104-000

ORDER ISSUING CERTIFICATE

(Issued December 18, 2014)

1. On March 11, 2014, Texas Eastern Transmission, LP (Texas Eastern) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate 65 feet of 20-inch-diameter pipeline and meter and chromatograph facilities, and make minor modifications to existing compressor station facilities in Pennsylvania, Ohio, and Indiana (Uniontown to Gas City Project (U2GC Project)). The U2GC Project is designed to provide 425,000 dekatherms (Dth) per day of firm pipeline capacity from receipt points near Texas Eastern's existing Uniontown Compressor Station in southwestern Pennsylvania to an interconnection with Panhandle Eastern Pipe Line Company, LP's (Panhandle) system near Gas City, Indiana.

2. For the reasons discussed below, the Commission will authorize Texas Eastern's proposals, subject to certain conditions.

I. Background and Proposal

3. Texas Eastern is a natural gas company engaged in the transportation of natural gas in interstate commerce, subject to the Commission's NGA jurisdiction. Texas Eastern's transmission system extends from Texas, Louisiana, and the Gulf of Mexico, through Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

¹ 15 U.S.C. §§ 717f(b) and 717f(c) (2012).

4. Texas Eastern proposes to construct and operate facilities in Pennsylvania, Ohio, and Indiana that are designed to provide 425,000 Dth per day of firm transportation capacity from receipt points near Texas Eastern's existing Uniontown Compressor Station in southwestern Pennsylvania to Lebanon, Ohio, where gas will flow north on Texas Eastern's Lebanon Lateral to an interconnection with Panhandle's system near Gas City, Indiana. Specifically, Texas Eastern proposes to:

- construct and operate 65 feet of 20-inch diameter piping to connect Texas Eastern's Line 2 to its Lines 1 and 3 at an existing launcher/receiver site approximately 6.25 miles east of the Five Point Compressor Station in Pickaway County, Ohio;
- construct and operate a new delivery meter to Panhandle near the existing Gas City Compressor Station;
- construct and operate new gas chromatographs at certain metering and regulation (M&R) stations;
- make the necessary compressor station modifications to provide for bi-directional flow capabilities along Texas Eastern's mainline at nine existing compressor stations.²

5. Texas Eastern states that the modifications necessary to provide for bi-directional flow capabilities consist of minor piping and valve modifications and unit control changes. Texas Eastern states that no changes in rated horsepower at compressor stations, additional compressor engines, or other drivers are required. Texas Eastern asserts that, with the exception of the proposed 65-foot-long, 20-inch-diameter crossover pipeline, all work for the U2GC Project will occur within the fence line of the existing developed compressor station sites in areas that have been previously disturbed by construction and on-going operations.

6. Texas Eastern conducted an open season for the U2GC Project from July 2 through July 31, 2012, which resulted in the execution of a precedent agreement with one shipper. Subsequently, Texas Eastern held a supplemental open season for the U2GC Project from August 15 to August 26, 2013. Following the supplemental open season,

² The modifications will occur at the Holbrook, Waynesburg, Berne, Summerfield, Somerset, Five Points, Lebanon, Glen Karn, and Gas City Compressor Stations.

Texas Eastern entered into precedent agreements with four additional shippers.³ Texas Eastern states that the U2GC Project has been fully subscribed. The shippers will pay discounted rates for transportation service.

7. Texas Eastern further requests a pre-determination that it may roll the costs associated with the U2GC Project into its system rates in a future NGA section 4 rate case. Texas Eastern states that the estimated cost of the U2GC Project is \$56,500,910.

II. Notice, Interventions, Protests, and Comments

8. Notice of Texas Eastern's application was published in the *Federal Register* on April 1, 2014 (79 Fed. Reg. 18,290). 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.⁴

9. National Fuel Gas Distribution Corporation (National Fuel) filed a late motion to intervene. National Fuel has demonstrated an interest in the proceeding and has shown that its participation will not delay, disrupt, or unfairly prejudice any other parties to the proceeding. Accordingly, we will grant National Fuel's late motion to intervene.⁵

10. Allegheny Defense Project (Allegheny), a conservation organization, filed a protest to Texas Eastern's application, asserting that the Commission must postpone action on the U2GC Project until it prepares a regional programmatic environmental impact statement (EIS) addressing all proposals related to increasing capacity and use of shale gas in the northeastern United States. Thereafter, states Allegheny, the Commission should prepare a site-specific EIS for the U2GC Project that includes other connected, similar, and cumulative projects.⁶

³ The U2GC Project subscribed shippers are: Range Resources-Appalachia, LLC; CNX Gas Company, LLC; East Resources, Inc.; EQT Energy, LLC; and Rice Drilling B, LLC.

⁴ 18 C.F.R. § 385.214 (2014).

⁵ See 18 C.F.R. § 385.214(c)(2) (2014).

⁶ On April 14, 2014, Allegheny filed a Motion for Leave to Intervene, and on April 15, 2014, filed its comments protesting the project.

11. On May 2, 2014, Texas Eastern filed an answer to Allegheny's protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,⁷ our rules do provide that we may, for good cause, waive this provision.⁸ Since Texas Eastern's answer provides information that has assisted the Commission in its decision-making process, the Commission will, for good cause, waive the regulatory proscription against answers in this case and accept Texas Eastern's response.

12. Indicated Shippers⁹ filed comments expressing concern about Texas Eastern's request for rolled-in rate treatment. Texas Eastern filed an answer to Indicated Shippers' comments. Indicated Shippers filed a reply to Texas Eastern's answer.

13. The issues raised in Allegheny's protest and Indicated Shippers' comments are addressed below.

III. Discussion

14. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁰

A. Application of the Certificate Policy Statement

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹¹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed

⁷ See 18 C.F.R. § 385.213(a)(2) (2014).

⁸ 18 C.F.R. § 385.101(e) (2014).

⁹ The Indicated Shippers are Anadarko Energy Service Company; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; Shell Energy North America (US), LP; ConocoPhillips Company; SWEPI, LP; and Direct Energy Business Marketing LLC (filed under its previous name Hess Energy Marketing, LLC).

¹⁰ 15 U.S.C. §§ 717f(b) and 717f(c) (2012).

¹¹ *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).

project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas 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.

16. 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.

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Texas Eastern proposes to charge its existing system rates as the initial recourse rates for services utilizing the new capacity created by the expansion facilities. Texas Eastern has demonstrated that the projected revenues associated with the U2GC Project exceed the cost of service associated with the project's facilities. Therefore, we find Texas Eastern's existing customers will not subsidize the project.

Existing Customers and Other Pipelines and Their Customers

18. Texas Eastern's existing customers will not experience any degradation in service due to Texas Eastern's proposal. In addition, the bi-directional flows created by the proposed project will diversify the supply sources that can be accessed by Texas Eastern's existing customers.

19. Because the project's shippers will be using the additional capacity to be created by this project to serve the incremental demand, the project will not be replacing firm transportation service on any other pipeline. Further, no other pipeline has protested Texas Eastern's application. Consequently, we find that there will be no adverse impacts on other pipelines or their captive customers.

Landowners and Communities

20. As stated above, with the exception of the proposed 65-foot-long, 20-inch-diameter crossover pipeline, all work for the U2GC Project will occur within the fence line of the existing developed compressor station sites in areas that have been previously disturbed by construction and on-going operations. Thus, we find that Texas Eastern has designed the U2GC Project to minimize economic impacts on landowners and nearby communities.

21. Texas Eastern has entered into long-term precedent agreements for 100 percent of the design capacity of the project. Based on the benefits Texas Eastern's proposal will provide to the project shippers, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Texas Eastern's proposed U2GC Project, as conditioned in this order.

B. Rates

22. Texas Eastern proposes to utilize its existing Rate Schedule FT-1 reservation rates as the initial recourse rates for U2GC Project capacity on its mainline and its existing Rate Schedule LLFT reservation rate as the initial recourse rate for U2GC Project capacity on the Lebanon Lateral. For mainline service, Texas Eastern calculated an estimated incremental monthly firm reservation rate of \$1.715 per Dth to recover the mainline cost of service;¹² its existing Rate Schedule FT-1 Market Zone 2-to-Market Zone 2 (M2-M2) reservation rate is \$5.956 per Dth. For the Lebanon Lateral, Texas Eastern calculated an estimated incremental monthly firm reservation rate of \$0.791 per Dth to recover the Lebanon Lateral cost of service,¹³ while the existing Rate Schedule LLFT rate is \$3.340 per Dth. The estimated incremental rates are less than Texas Eastern's existing rates. Thus, consistent with Commission policy, we will approve the use of Texas Eastern's existing system rates as the initial recourse rates for services utilizing the new capacity created by the expansion facilities.

¹² Texas Eastern May 5, 2014 Data Response, Question 3.

¹³ Texas Eastern May 5, 2014 Data Response, Question 3.

C. Rolled-in Rate Treatment

23. Exhibit N to Texas Eastern's application provides a three-year statement of revenues, expenses and income, as well as a three-year cost-of-service analysis for both the mainline and the Lebanon Lateral. Texas Eastern states that Exhibit N demonstrates that the revenues associated with the proposed project will exceed the cost of service for each year analyzed. Based on this showing, Texas Eastern requests a pre-determination that it may roll the costs associated with the U2GC Project into its existing FT-1 and LLFT rates in Texas Eastern's next NGA section 4 rate proceeding.

24. Indicated Shippers filed comments expressing concern about Texas Eastern's request for rolled-in rate treatment, contending that Texas Eastern should be required to account for the project's construction and operating costs in any future section 4 rate proceeding. Specifically, Indicated Shippers request that the Commission condition any rolled-in rate determination on Texas Eastern's demonstration that no significant change in circumstances has occurred by accounting for the construction and operating costs and revenues separately in accordance with section 154.309 of the Commission's regulations in the event Texas Eastern seeks rolled-in rate treatment in any future rate proceeding.

25. To receive authorization for rolled-in rate treatment, a pipeline must demonstrate that rolling the costs associated with the construction and operation of new facilities into its system rates 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 the costs of the project. 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 general section 4 rate proceeding, we will compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).¹⁴

26. The shippers on the U2GC Project have agreed to pay a rate that is discounted from the currently effective system rate. In instances where this is the case, the Commission has generally compared project costs with the revenues that would be generated at the contracted rate.

27. For Rate Schedule FT-1 service on Texas Eastern's mainline, based on the actual contract volumes and actual contract rates, Texas Eastern projects revenue for the first year of the U2GC Project to be \$21,717,330 and the cost of service for the first year to be \$8,745,092. Texas Eastern also projects total revenue for the first three years of the

¹⁴ See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

U2GC Project to be \$65,151,990 and the total cost of service for the first three years of the U2GC Project to be \$25,602,767. Therefore, the projected revenues would exceed projected cost of service for the first three years of service.

28. For Rate Schedule LLFT service on the Lebanon Lateral, based on the actual contract volumes and actual contract rates, Texas Eastern projects revenue for the first year of the U2GC Project to be \$4,653,750 and the cost of service for the first year to be \$4,033,301. Texas Eastern also projects total revenue for the first three years of the U2GC Project to be \$13,961,250 and the total cost of service for the first three years of the U2GC Project to be \$11,773,324. Therefore, the projected revenues would exceed projected cost of service for the first three years of service.

29. Based upon the facts, estimates, and assumptions before the Commission in this proceeding, Texas Eastern has shown that the projected revenues for the U2GC Project exceed the estimated incremental cost-of-service associated with the proposed project. Thus, we will grant Texas Eastern a predetermination of rolled-in rate treatment for the U2GC Project in its next NGA section 4 rate proceeding, absent any significant change in material circumstances.

30. As stated above, Indicated Shippers requested that Texas Eastern be required to account for the construction and operating costs and revenues separately in accordance with section 154.309 of the Commission's regulations.¹⁵ Texas Eastern contends that section 154.309 only applies to expansion projects for which incremental rates are charged.¹⁶ Because it has not proposed an incremental recourse rate and the project qualifies for rolled-in rate treatment, Texas Eastern asserts that section 154.309 does not apply here. However, Indicated Shippers contend that the “determinative factor in imposing the condition is not whether a proposed project involves minor or major modification; rather it is whether overruns may cause costs to exceed revenues and negate the basis for a roll-in determination.”¹⁷ Indicated Shippers argue that given the relation between the level of costs and revenues in this proceeding, it is “reasonably possible that a change in cost-of-service or estimated revenues could result in a basis for revoking a rolled-in rate predetermination.”¹⁸ Texas Eastern acknowledges that the Commission has imposed this condition on projects qualifying for rolled-in rate treatment

¹⁵ 18 C.F.R. § 154.309 (2014).

¹⁶ Texas Eastern April 28, 2014 Answer at 4.

¹⁷ Indicated Shippers May 14, 2014 Reply at 2.

¹⁸ *Id.* at 3.

in cases where shippers have raised concern that cost overruns might negate the basis for the roll-in determination.¹⁹

31. Texas Eastern shows that for the mainline portion of the U2GC Project, revenues substantially exceed costs by almost \$13 million for the first year of service. Conversely, as noted by Indicated Shippers, for the Lebanon Lateral, revenues only exceed costs by \$620,449 for the first year of service. If cost overruns occur, as Indicated Shippers are concerned might happen due to the narrow difference between projected revenues and the estimated cost of service for the Lebanon Lateral, such an event may constitute a significant change in circumstances warranting a reconsideration of the pre-determination of rolled-in rates.²⁰ To ensure that all parties have full knowledge of the costs and revenues attributable to the project, we will require Texas Eastern to account for the construction and operating costs and revenues for the Lebanon Lateral separately in accordance with section 154.309 of the Commission's regulations.²¹ With such information, the parties and the Commission can evaluate the costs of the project and identify any change in material circumstances that may warrant a re-examination of rolled-in rate treatment in Texas Eastern's next NGA section 4 rate proceeding. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.²²

D. Applicable Shrinkage Percentage and Electric Power Costs

32. Texas Eastern proposes to charge its existing Rate Schedules FT-1 and LLFT applicable shrinkage percentages and electric power costs for transportation on the capacity associated with the U2GC Project facilities. Texas Eastern's data reflects that the applicable shrinkage percentages and electric power costs will decrease as a result of the U2GC Project.²³ Therefore, we will grant Texas Eastern's request to charge its

¹⁹ Texas Eastern April 28, 2014 Answer at 4.

²⁰ *Transcontinental Gas Pipe Line Corp.*, 127 FERC ¶ 61,122, at P 24 (2009) (The Commission held that a separate accounting is appropriate when there is a "narrow difference" between projected revenues and cost of service.); *Dominion Transmission, Inc.*, 144 FERC ¶ 61,182, at P 20 (2013).

²¹ 18 C.F.R. § 154.309 (2014).

²² *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, *FERC Stats. and Regs.* ¶ 31,267, at P 23 (2008).

²³ Texas Eastern May 5, 2014 Data Response, Question 1.

existing Rate Schedules FT-1 and LLFT applicable shrinkage percentages and electric power costs.

E. Tariff

33. Texas Eastern includes in its application a new *pro forma* tariff record to address a potential fuel issue.²⁴ Texas Eastern's current tariff has the potential to create a situation where a shipper desires to use the mainline to deliver gas to the head of a Texas Eastern delivery lateral or mainline extension for further delivery on the Texas Eastern system. This will require the shipper to execute "back to back" firm service agreements, creating a situation where the shipper may need to modify the volume on the mainline when fuel rates change on the delivery lateral and mainline extension. Texas Eastern's proposed *pro forma* tariff record permits a shipper to submit a single combined Applicable Shrinkage Rate (the aggregate of the Applicable Shrinkage for the Mainline Service and the Applicable Shrinkage for the lateral/mainline extension service) at no additional cost and without contracting for additional capacity, when the shipper nominates on both the mainline and mainline extension/lateral for the same gas day. This proposed tariff revision may affect not only U2GC Project customers but other Texas Eastern customers as well. Since Texas Eastern's proposals could affect non-U2GC Project customers, we will not address Texas Eastern's proposed *pro forma* tariff record in this proceeding. Our decision here is without prejudice to Texas Eastern proposing such tariff language in a NGA section 4 tariff proceeding.

34. Section 1.2 of Texas Eastern's Rate Schedule LLFT currently states, "Initial service under this Rate Schedule LLFT is available pursuant to the acquisition, ownership, and operation of certain facilities (herein referred to as "Lebanon Lateral") as further defined in the final order accepting Docket No. CP92-459-000."²⁵ We direct Texas Eastern to make conforming changes to Rate Schedule LLFT to reflect the Lebanon Lateral facilities authorized in this proceeding. We direct Texas Eastern to submit an actual tariff record no earlier than 60 days, and no later than 30 days, prior to the date the U2GC Project facilities go into service.

²⁴ See Exhibit P.

²⁵ Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1; 5, Rate Schedules LLFT and LLIT, 0.0.0.

IV. Environmental Analysis

35. On April 29, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) for the U2GC Project. The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; conservation organizations; potentially interested Indian tribes; local libraries and newspapers; and affected landowners in the vicinity of the project. In response to the NOI, we received one agency consultation letter that addressed federally listed species under section 7 of the Endangered Species Act.

36. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an Environmental Assessment (EA) for Texas Eastern's proposal. The analysis in the EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. On August 21, 2014, the EA was placed into the public record for this proceeding. All substantive comments received in response to the NOI were addressed in the EA. No comments on the EA were received.²⁶

A. Allegheny's Protest

37. Allegheny asserts in its April 15, 2014 protest that the Commission must address the environmental consequences of Marcellus Shale gas extraction and associated infrastructure development and expansion at both a regional level, by way of a programmatic EIS, and as well as at the site-specific level.²⁷

²⁶ On October 29, 2014, Indiana State Historic Preservation Officer (SHPO) submitted comments on the draft unanticipated discovery plan and emergency procedures for the Project. The EA in Section B6.1 discusses the requirement for Texas Eastern to file a copy of a state-specific Discovery Plan for Indiana. Environmental Condition 11 requires Texas Eastern to file with the Secretary, for review and approval of the Director of the Office of Energy Projects, a state-specific Discovery Plan in Indiana, and documentation that the Discovery Plan was reviewed and found acceptable by the Indiana SHPO.

²⁷ Allegheny's protest predates the *Notice of Intent to Prepare an Environmental Assessment and Request for Comments on Environmental Issues for the Proposed Uniontown to Gas City Project* issued April 29, 2014. Allegheny filed no further comments on either the NOI or the Environmental Assessment for the project issued on August 21, 2014.

1. Programmatic (Regional) EIS

38. Allegheny asserts that the Commission should postpone processing Texas Eastern's application, as well as the processing of all other pending applications for facilities in the northeastern U.S., until the Commission prepares a regional programmatic EIS examining the direct, indirect, and cumulative effects of shale gas extraction and associated activities in the Marcellus Shale region. This assertion is predicated in part on the allegation that the Commission has aligned with the both the Obama Administration and the gas industry in developing "a regional plan to exploit the Marcellus (and other shale formations in the region) to increase reliance on natural gas, particularly in the Northeastern U.S."²⁸ In turn, Allegheny asserts, that all pipeline projects proposed for the purpose of providing increased capacity to accommodate shale gas in the northeastern U.S. constitute a "broad Federal action," to wit, a series of separate actions that are related to each other closely enough to be, in effect, a single course of action planned together and associated with this regional program.

39. CEQ regulations state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program."²⁹ There is no Commission plan or policy to promote the unconventional production of, or to increase reliance on, natural gas.

40. According to Allegheny, the Commission's active role in the federal government's large scale regional development plan to "aggressively promote and actively facilitate the extraction of shale gas in the Marcellus Region,"³⁰ is demonstrated by the Commission's processing and approval of numerous applications for increased capacity in the northeast region of the U.S., including the instant application. In support of this claim, Allegheny points to, among other things, tables listing major pipeline projects approved by the Commission from 2009 through March 8, 2013,³¹ as well as all pending applications for major pipeline projects;³² a staff power-point presentation on Marcellus Shale in the Appalachian Basin consisting of maps of the Marcellus Shale region and of the approved,

²⁸ Allegheny Protest at 52-53.

²⁹ 40 C.F.R. § 1508.18(b)(3) (2014).

³⁰ Allegheny Protest at 3.

³¹ *Id.*, Table 1, FERC Approved Major Pipeline Projects (2009-Present), at 9-12.

³² *Id.*, Table 2, FERC Major Pipeline Projects Pending (Onshore), at 12-13.

pending, and potential interstate pipeline projects in Pennsylvania;³³ and a graphic created by the Commission's Office of Energy Projects that identifies "major pipeline projects" on the horizon from January 2010 to February 2014 and separates them into four geographic areas within the continental U.S.³⁴

41. Additionally, Allegheny specifically identifies nine cases since 2009 in which the Commission specifically referred to the development of Marcellus Shale gas production.³⁵

42. Allegheny maintains that these cases, together with a host of statements and documents, including those from the Commission itself, other federal and state agencies, the natural gas industry, individual commissioners, and news reports, demonstrate the Commission's "awareness of many companies' plans to increase infrastructure capacity to accommodate and facilitate natural gas extraction in Marcellus Shale." Allegheny further asserts that the Commission is actively facilitating the Obama administration's alleged policy of promoting and facilitating the rapid expansion of Marcellus Shale gas extraction.

43. Under section 1(b) of the NGA,³⁶ the Commission has jurisdiction over the transportation of natural gas in interstate commerce and the natural gas companies providing that transportation, but has no jurisdiction over natural gas production activities. This proceeding involves an application filed under section 7(c) of the NGA for a certificate of public convenience and necessity to construct and operate specific

³³ *Id.*, Figure 1: FERC PowerPoint Presentation on Marcellus Shale in the Appalachian Basin, at 16, and Figure 2: FERC map of interstate pipeline projects in Pennsylvania, at 18.

³⁴ *Id.*, Figure 8: Major Pipeline Projects on the Horizon (MMcf/d) Jan. 2010 – Feb 2014 (FERC), at 26.

³⁵ *AES Sparrows Point LNG, LLC*, 126 FERC ¶ 61,019 (2009); *order on reh'g* 129 FERC ¶ 61,245 (2009); *Dominion Cove Point, LNG, LP*, 126 FERC ¶ 61,036 at P 20 (2009); *Iroquois Gas Transmission System, L.P.*, 132 FERC ¶ 61,230, at P 2 (2010); *National Fuel Gas Supply Corp.*, 133 FERC ¶ 61,235, at P 2 (2010); *Central New York Oil and Gas Co., LLC*, 134 FERC ¶ 61,035, at P 5 (2011); *Empire Pipeline, Inc.*, 135 FERC ¶ 61,163, at P 3 (2011); *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239, at P 3 (2011); *Tennessee Gas Pipeline Co.* 136 FERC ¶ 61,173, at PP 2,5 (2011); and *National Fuel Gas Supply Corp.*, 137 FERC ¶ 61,054, at PP 2,7 (2011).

³⁶ 15 U.S.C. § 717 (2012).

facilities for the transportation of natural gas in interstate commerce.³⁷ NGA section 7(e) mandates that the Commission issue such a certificate if it finds that the construction and operation of the facilities “is or will be required by the present or future public convenience and necessity.”³⁸ In reaching this determination, the Commission performs a flexible, balancing process in which it weighs the criteria enumerated in the Commission’s Certificate Policy Statement, as detailed above, as well as analyzing and balancing the potential environmental impacts of the proposed project.

44. As Allegheny points out, our Strategic Plan for 2014-2018 states:

Demand for natural gas in the United States is at its highest levels on record, and natural gas production continues to increase due to the development of shale gas. Among its many uses, natural gas is a substantial and growing resource for electric power generation, in part due to the current low price of natural gas. The responsible development of interstate natural gas infrastructure – pipelines, storage, and LNG facilities – is a critical link to ensuring that gas supply can reach market areas.

However, interstate natural gas infrastructure is proposed and developed by private industry, as reflected in the applications filed with the Commission by natural gas companies. As described above, the Commission authorizes the proposed project if it “is or will be required by the present or future public convenience and necessity.”

45. Likewise, neither Allegheny’s tables, maps, charts, and other illustrations, nor the referenced statements Allegheny has tied to other federal and state agencies, the natural gas industry, or media reports make reference to any regional plan, project, or policy. While it may be that these items demonstrate the Commission’s “awareness of many companies’ plans to increase infrastructure capacity to accommodate and facilitate natural gas extraction in Marcellus Shale,” there is no reference to, or evidence of, a regional program or policy. In fact, all evidence relied upon by Allegheny illustrates the fact that, as Texas Eastern points out,³⁹ the regional development of Marcellus Shale gas

³⁷ NGA section 7(c) provides that no natural gas company shall transport natural gas or construct any facilities for such transportation without a certificate of public convenience and necessity issued by the Commission.

³⁸ 15 U.S.C. § 717f(e) (2012).

³⁹ Texas Eastern May 2, 2014 Answer at 5.

is solely initiated by private industry and, as the Supreme Court found in *Kleppe v. Sierra Club (Kleppe)*, a programmatic EIS is not required to evaluate the regional development of a resource by private industry that is not part of, or responsive to, a federal plan or program in that region.⁴⁰

46. Further, Allegheny has not shown any interrelationship or connectedness between the various pipeline projects proposed to provide capacity to accommodate additional supply sourced in the northeastern U.S. beyond the fact that they might share a general regional proximity to the Marcellus Shale region. None of these projects' utility is shown to be functionally or financially dependent upon any other project; nor are any proposals shown, or claimed to be, dependent upon the timing of another project's approval or service date. Based on this independent utility, these projects would not trigger one another and could proceed on their own. Accordingly, the proposed projects described by Allegheny are not interdependent or otherwise interrelated or connected, either physically or in purpose.

47. For all the above reasons, the Commission concludes that no program exists upon which the Commission must undertake a programmatic EIS.

2. Scope of Environmental Analysis

48. Regarding the Commission's site-specific environmental analysis of the U2GC Project, Allegheny asserts this analysis must include a review of the direct, indirect, and cumulative effects of shale gas extraction and associated activities, including, but not limited to, pipeline construction/expansion, construction/expansion of compressor stations, frac sand mining, shale gas wastewater disposal, and shale gas water consumption. For the reasons discussed below, the Commission disagrees.

a. Direct and Indirect Impacts

49. CEQ regulations require agencies to consider three kinds of impacts flowing from a Federal action: direct, indirect, and cumulative.⁴¹ The direct impacts of an action are caused by the action and occur at the same time and place within the footprint of the proposed action. The Commission has no jurisdiction over pipeline or compression facilities associated with gas production or gathering and no role in their authorization. Therefore the direct impacts of such facilities are not a part of the Commission's review of a proposed pipeline project.

⁴⁰ *Kleppe*, 427 U.S. 390 at 400 (1976).

⁴¹ 40 C.F.R. § 1508.25 (2014).

50. Indirect impacts are “caused by the proposed action” and occur later in time or farther removed in distance than direct project impacts, but are still “reasonably foreseeable.”⁴² Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water.⁴³ For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be “two links of a single chain.”⁴⁴

51. The potential environmental effects associated with shale gas development are neither sufficiently causally related to the U2GC Project to warrant a detailed analysis nor are the potential environmental impacts reasonably foreseeable, as contemplated by the CEQ regulations.⁴⁵

52. The U2GC Project involves relatively modest modifications to existing facilities that will enable bi-directional flows on Texas Eastern’s existing pipeline. The U2GC Project is not creating the growth in the development of unconventional gas resources in the Marcellus region. Rather, the U2GC Project is responding to a need for transportation of natural gas that was identified following the development of production and use of the resource. Further, such development will likely continue regardless of whether the U2GC Project is approved because multiple existing and proposed transportation alternatives for production from the region are available.⁴⁶ Thus, there is an insufficient causal link between the proposed project and additional development in the region for such development to be considered an indirect impact under NEPA and CEQ’s regulations.

⁴² 40 C.F.R. § 1508.8(b) (2014).

⁴³ *Id.*

⁴⁴ *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

⁴⁵ *See Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed, sub nom. Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (upholding FERC’s analysis of the development of Marcellus Shale natural gas reserves where FERC reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

⁴⁶ *Id.*

53. Moreover, even if such a causal relationship were shown, the scope of the impacts from any such induced production is not reasonably foreseeable as contemplated by CEQ's regulations and case law. An impact is reasonably foreseeable if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."⁴⁷ Courts have noted the starting point of any NEPA analysis is a "rule of reason," under which NEPA documents "need not address remote and highly speculative consequences."⁴⁸ While courts have held that NEPA requires "reasonable forecasting," an agency is not required "to engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."⁴⁹ Knowing the identity of a supplier of gas to be shipped on a pipeline, and even the general area where a producer's existing wells are located, does not alter the fact that the number, location, and specific impacts associated with any additional production that producer may engage in to supply Texas Eastern's customers are matters of speculation.

b. Cumulative Impacts

54. A "cumulative impact" is defined by CEQ as the "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."⁵⁰ A cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur in the project area or the region of influence of the project being analyzed.⁵¹ CEQ states that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."⁵² An agency is only required to include "such information as appears to be reasonably necessary under the circumstances

⁴⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁴⁸ *Hammond v. Norton*, 370 F.Supp.2d 226, 245-46 (D.D.C. 2005).

⁴⁹ *N. Plains Res. Council v. Surface Transp. Board.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

⁵⁰ 40 C.F.R. § 1508.7 (2014).

⁵¹ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, (January 1997).

⁵² *Id.* at 8.

for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”⁵³

55. CEQ’s guidance on cumulative impacts assessments advises that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments.⁵⁴ CEQ further states that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁵⁵ Accordingly, proposed actions that result in a finding of no significant impact usually involve only a limited cumulative impact analysis to confirm that the proposed action would not, in fact, have a significant impact on the environment.⁵⁶

56. Here, as indicated above, the proposed U2GC Project consists of piping modifications and bi-directional retrofits at nine of Texas Eastern’s existing compressor stations, installation of 10 skid-mounted pre-fabricated buildings housing certain remote and measuring equipment at various locations along Texas Eastern’s pipeline system, and the construction of 65 feet of 20-inch diameter crossover piping. The project’s total land requirements are 142.7 acres, only 0.1 acre of which will be permanently affected, and nearly all of the proposed activities associated with the project will take place within Texas Eastern’s existing right-of-way and easement. Moreover, the project does not involve any new compressor equipment or modifications that would increase emissions

⁵³ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d. Cir. 1975)).

⁵⁴ The Supreme Court has similarly held that “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.” *Kleppe*, 427 U.S. 390 at 413.

⁵⁵ *CEQ Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2-3, (CEQ Guidance on Past Effects)*); see also *El Paso Natural Gas Co.*, 136 FERC ¶ 61,175, at P 5 (2011).

⁵⁶ *Id.*

or noise from the compressor stations, and any emissions and noise impacts were deemed to be short-term, temporary, or localized.⁵⁷ Consequently, the EA concluded, and we agree, that the impacts of this project are minor, temporary, and highly localized.⁵⁸

57. The EA limited its cumulative impacts review to projects directly in the vicinity of the project, identifying the wells that were permitted and under development, and the major pipeline projects occurring within the project vicinity.⁵⁹ Given both the limited scope of the U2GC Project and its minimal environmental footprint, the Commission finds that the EA has properly identified the U2GC Project's region of influence as being highly localized⁶⁰ and appropriately limited its cumulative impacts analysis to projects located within that area, rather than expanding the analysis as requested by Allegheny.

58. Furthermore, the assertion that the site-specific environmental analysis of a project which will provide access to natural gas produced from a particular region must consider potential impacts associated with the development of gas in that region, including but not limited to impacts associated with the region's existing and future natural gas infrastructure, has been addressed and rejected by the Commission in *Central New York Oil and Gas Co., LLC (CNYOGC)* and the Commission's orders in that case were upheld

⁵⁷ EA at 21-24.

⁵⁸ EA at 26. The Commission notes that other than Allegheny's protest, the NEPA scoping process yielded only two routine consultation letters and no comments on the EA were filed, which further indicates the minor, temporary, and highly localized nature of the impacts of this project.

⁵⁹ EA at 26, and Table B-3, at 27.

⁶⁰ Allegheny claims that Texas Eastern's Resource Report 1, at 1-8, too narrowly limits the geography of the area to be considered to be municipalities and counties in which the facilities to be modified are located, and that the resource report was otherwise vague, inadequate, or biased. We note that our staff directed at least three environmental data requests to Texas Eastern seeking further or clarifying environmental information and in response, Texas Eastern supplemented the resource information report on June 2, 2014. We are satisfied that we have all the information necessary to analyze the impacts on resources within the project area.

on judicial review.⁶¹ Allegheny's arguments and evidence parallel arguments and evidence we rejected in *CNYOGC*.⁶²

59. In *CNYOGC*, the Commission found that Marcellus Shale development and its associated potential environmental impacts were not sufficiently causally-related to the MARC I Project to warrant the comprehensive analysis sought. Here, as in *CNYOGC*, development and production will continue in the region regardless of whether the U2GC Project is approved. As we noted in *CNYOGC*, in the event the Commission does not authorize new interstate natural gas pipeline facilities, the potential exists for producers or developers of unregulated gathering assets to, for example, build longer gathering lines to connect wells in proximity to the proposed interstate facilities to other existing interstate pipelines with no Commission regulation or oversight. The same observation holds true here.

60. The EA identifies four major projects occurring in the U2GC Project's region of influence,⁶³ and concludes that these projects may or do have effects on wildlife and vegetation, water resources and wetlands, and air quality and noise, but that the impacts on these resources associated with the U2GC Project would be relatively minor and temporary. Accordingly, when considered with past, present, and reasonably foreseeable projects in the vicinity, the EA concludes that the cumulative impacts of the U2GC Project would be both minor and temporary.

61. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Texas Eastern's application, as supplemented, and in compliance with the environmental conditions in Appendix B to this order, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

⁶¹ *Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 2012 WL 1596341 (2nd Cir. Apr. 17, 2012) (unpublished opinion).

⁶² *CNYOGC*'s MARC I Project consists of a 39-mile long, 30-inch diameter pipeline in Lycoming and Bradford Counties and additional compressor facilities in Bradford and Sullivan Counties, all in Pennsylvania.

⁶³ See EA at 27, Table B-3. Of these, only the Bailey Mine and Prep Plant is sited in Pennsylvania.

V. Conclusion

62. At a hearing held on December 18, 2014, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application as supplemented, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing the construction of the U2GC Project facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned on the following:

(1) Texas Eastern's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.

(2) Texas Eastern's complying with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(3) Texas Eastern's complying with the environmental conditions in Appendix B of this order.

(4) Texas Eastern's executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to commencing construction.

(C) Texas Eastern's proposed use of its system rates as initial rates for the U2GC Project capacity is approved.

(D) Texas Eastern's request for a predetermination supporting rolled-in rate treatment for the costs of the U2GC Project in its next general NGA section 4 rate proceeding is granted, barring a significant change in circumstances, as discussed in the body of this order.

(E) Texas Eastern shall keep separate books and accounting of costs and revenues attributable to the Lebanon Lateral, as discussed in the body of this order.

(F) Texas Eastern shall file actual tariff records no earlier than 60 days, and no later than 30 days, prior to the date the U2GC Project facilities go into service.

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

(H) The late motion to intervene filed by National Fuel is granted.

(I) Allegheny's Protest is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

**Appendix A
Interventions**

Allegheny Defense Project

Anadarko Energy Services Company

Atmos Energy Corporation

Atmos Energy Marketing, LLC

CNX Gas Company, LLC

ConocoPhillips Company

Duke Energy Progress, Inc., Duke Energy Commercial Asset Management, Inc., Duke Energy Hanging Rock II, LLC, Duke Energy Fayette II, LLC, and Duke Energy Washington, II, LLC, and Duke Energy Indiana, Inc. (Duke Companies)

EQT Energy, LLC

Exelon Corporation

ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation

Direct Energy Business Marketing, LLC⁶⁴

National Fuel Gas Distribution Corporation

National Grid Gas Delivery Companies

New Jersey Natural Gas Company

NJR Energy Services Company

Panhandle Eastern Pipe Line Company, LP

Piedmont Natural Gas Company

Range Resources-Appalachia, LLC

Rice Drilling B, LLC

Shell Energy North America (US), LP

SWEPI, LP

⁶⁴ Direct Energy Business Marketing, LLC filed motion to intervene with its previous name: Hess Energy Marketing, LLC.

Appendix B Environmental Conditions

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

1. Texas Eastern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Texas Eastern 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 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 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**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed design sheets. **As soon as they are available, and before the start of construction**, Texas Eastern shall file with the Secretary any revised detailed survey maps/sheets at a scale not smaller than 1:6,000 with station positions for the 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.

5. Texas Eastern shall file with the Secretary detailed maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and 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 the OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resource mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individuals 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**, Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Texas Eastern would 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 Texas Eastern would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;

- c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instruction Texas Eastern would 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 Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern would 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, Texas Eastern 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 would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Texas Eastern'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 which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and

- g. copies of any correspondence received by Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
8. **Prior to receiving written authorization from the Director of the OEP to commence construction of any project facilities**, Texas Eastern shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Texas Eastern must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would 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**, Texas Eastern 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 would be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Texas Eastern 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**, Texas Eastern shall file with the Secretary, for review and approval of the Director of the OEP, a state-specific Discovery of Unanticipated Cultural Resources and Human Remains (Discovery Plan) in Indiana, and documentation that the Discovery Plan was reviewed and found acceptable by the Indiana State Historic Preservation Office. The Discovery Plan shall follow the outline provided in Section III of the OEP's *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects* (December 2002 version).