

161 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP16-496-000

ORDER ISSUING CERTIFICATE

(Issued December 15, 2017)

1. On August 19, 2016, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate compression facilities in Texas (Lone Star Project) to provide 300,000 dekatherms per day (Dth/d) of firm transportation service to Corpus Christi Liquefaction, LLC (Corpus Christi Liquefaction).³
2. For the reasons discussed below, we will grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Tennessee, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA, engaged in the transportation of natural gas in interstate commerce.⁴ Tennessee, a subsidiary of Kinder Morgan Energy Partners, L.P.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2017).

³ On December 30, 2014, the Commission authorized Corpus Christi Liquefaction to construct and operate liquefied natural gas (LNG) export and import facilities in San Patricio and Nueces Counties, Texas. *Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283 (2014). The facilities are currently under construction.

⁴ 15 U.S.C. § 717(a)(6) (2012).

(Kinder Morgan), owns and operates an approximately 12,000-mile-long pipeline system, which extends northeast from Texas, Louisiana, and the Gulf of Mexico through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

4. The Lone Star Project is designed to enable Tennessee to provide an additional 300,000 Dth/d of firm natural gas transportation service on Tennessee's 500 Line for delivery to a new point of interconnection with Cheniere Corpus Christi Pipeline, L.P. (Cheniere)⁵ on Tennessee's 100 Line in San Patricio County, Texas. To provide this expansion service, Tennessee proposes to construct, install, operate, and maintain the following facilities:

- A new bi-directional compressor station with a 10,915 horsepower (HP) Solar Taurus 70 gas turbine/compressor in San Patricio County, Texas, as well as a compressor building, station piping, and other ancillary equipment on Tennessee's 100 Line (Compressor Station 3A).
- A new bi-directional compressor station with a 20,500 HP Solar Titan 130 gas turbine/compressor unit in Jackson County, Texas, as well as a compressor building, station piping, and other ancillary equipment on Tennessee's 100 Line (Compressor Station 11A).

Tennessee estimates that the cost of the proposed facilities will be approximately \$131.9 million.

5. Tennessee also explains that it has reserved certain existing capacity on its system for the project pursuant to Article XXVI, section 5.8 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Specifically, Tennessee states that it reserved 300,000 Dth/d on its mainline 100 Line and 300,000 Dth/d on its 500 Line, as well as 300,000 Dth/d of meter capacity at Meter No. 412754.

⁵ On December 30, 2014, along with the authorization granting Corpus Christi Liquefaction approval to construct and operate its LNG export and import facilities, the Commission authorized Cheniere Corpus Christi Pipeline to construct and operate a 23-mile-long pipeline to transport gas bi-directionally between Corpus Christi Liquefaction's proposed LNG terminal and existing interstate and intrastate natural gas pipelines. *Corpus Christi Liquefaction*, 149 FERC ¶ 61,283 (2014). The pipeline facilities are currently under construction.

6. Tennessee conducted an open season for the Lone Star Project from October 9, through October 31, 2014.⁶ Prior to holding an open season, Tennessee executed a binding precedent agreement with Corpus Christi Liquefaction for the full 300,000 Dth/d of firm transportation service for a twenty-year term. Tennessee states that Corpus Christi Liquefaction qualified as a Foundation Shipper for the project and, as such, obtained certain incentives. During the open season, Tennessee did not receive any qualifying bids for service.

7. Tennessee proposes to use its general system rates under Rate Schedules FT-A as the applicable recourse rates for firm transportation service to be provided on the Lone Star Project. Tennessee requests a predetermination that it can roll the costs of the project into its general system rates in its next NGA section 4 general rate proceeding.⁷

II. Notice, Intervention, Protests, and Comments

8. Public notice of Tennessee's application was published in the *Federal Register* on September 1, 2016, with comments due September 22, 2016.⁸ 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.⁹

9. The Tennessee Customer Group,¹⁰ Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (referred to herein collectively as Con Edison), and Indicated Shippers¹¹ filed protests on certain rate matters. The protestors

⁶ Tennessee indicates that it solicited offers from its shippers to permanently relinquish capacity in the open season but no shippers offered to turn back capacity in response.

⁷ Tennessee Application at 4.

⁸ 81 Fed. Reg. 62,117 (2016).

⁹ 18 C.F.R. § 385.214(c) (2017).

¹⁰ The Tennessee Customer Group is comprised of 24 of Tennessee's firm customers, which are listed in Appendix A.

¹¹ Indicated Shippers includes: Anadarko Energy Services Company; Chief Oil & Gas LLC; ConocoPhillips Company; Direct Energy Business Marketing, LLC; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; and Shell Energy North America (U.S.) Inc.

assert that Tennessee failed to support its request to charge its existing fuel retention percentages. Indicated Shippers also argues that Tennessee's proposal to charge its existing system rates as initial recourse rates should be denied. In addition, the Tennessee Customer Group and the Indicated Shippers oppose Tennessee's request for a predetermination of rolled-in rate treatment.

10. Numerous residents in San Patricio and Jackson Counties, who own property near, or reside in, the vicinity of the project, also filed comments expressing concerns about noise and traffic from the proposed facility. They also raised general concerns about the proximity of the project to their residences, potential of the project to decrease property values, affect the local environment and wildlife, and increase air pollution. Finally, they questioned whether the Commission would impose measures to ensure public safety in the event of an accident or incident.

11. On November 23, 2016, Tennessee filed a motion for leave to answer and answers to the protests of the Tennessee Customer Group, Con Edison, and Indicated Shippers, as well as an answer to comments opposing the location of proposed Compressor Station 11A. On December 8, 2016, the Tennessee Customer Group filed an answer to Tennessee's answer. On December 19, 2016, intervenor Joseph W. Bitter filed an answer to Tennessee's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, our rules also provide that we may waive this provision for good cause shown.¹² We will accept the filings here because they have provided information that assisted us in our decision-making process.

12. The environmental concerns raised in the comments are addressed in the environmental assessment (EA) prepared by Commission staff or further discussed in the environmental section below. We will discuss the protests of the Tennessee Customer Group, Con Edison, and the Indicated Shippers in the rates section below.

III. Discussion

13. Since Tennessee's proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹³

¹² Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits the filing of answers to protests. 18 C.F.R. § 385.213(a)(2) (2017).

¹³ 15 U.S.C. §§ 717f(c) and (e) (2012).

A. Application of Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁴ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new 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.

15. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction of the new natural gas facilities. 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 consider the environmental analysis where other interests are addressed.

16. We find that Tennessee's proposal satisfies the threshold requirement that the project will not be subsidized by its existing customers. Tennessee proposes to charge its existing general system rates under Rate Schedule FT-A as the initial recourse rates for firm transportation services utilizing the incremental capacity created by the project. As discussed below, illustrative rates calculated to recover the incremental costs associated with the Lone Star Project are lower than Tennessee's existing rates. Moreover, as further discussed below, Tennessee has demonstrated that the projected revenues will exceed the cost of the project. Accordingly, we find that the threshold no-subsidy requirement has been met.

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

17. Tennessee's proposed project will not degrade service to existing customers. The Lone Star Project will enable Tennessee to provide 300,000 Dth/d of incremental firm transportation service for Corpus Christi Liquefaction, which has signed a 20-year binding precedent agreement for 100 percent of the expansion capacity. In addition, there will be no adverse impact on other existing pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. No pipelines or their captive customers have protested Tennessee's application.

18. We also find that Tennessee has designed the Lone Star Project to have minimal impacts on landowners and surrounding communities. Tennessee states that it has acquired the necessary property for construction of Compressor Station 3A. Tennessee also states that it has acquired a majority of the necessary property for construction of Compressor Station 11A, and has executed an easement agreement to access the property.¹⁵ Additionally, as further discussed in the environmental section below, implementation of mitigation measures, such as completion of a visual screening plan and noise surveys, will adequately minimize adverse effects on nearby residents and the surrounding communities.

19. The Lone Star Project will enable Tennessee to provide 300,000 Dth/d of firm transportation service for Corpus Christi Liquefaction, which has signed a 20-year binding precedent agreement for 100 percent of the expansion capacity. Based on the benefits the project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Tennessee's proposal, as conditioned in this order.

B. Rates

1. Initial Recourse Rates

20. Tennessee proposes to charge its existing Rate Schedule FT-A reservation and commodity charges of \$8.3417 per Dth and \$0.0042 per Dth,¹⁶ respectively, as the initial recourse rates for service on the project facilities. Tennessee estimates a Year 1 cost of service for the expansion facilities of \$25,729,000, utilizing the rate of return approved

¹⁵ Tennessee February 10, 2017 Response to Staff's January 25, 2017 Data Request at Response 1. Tennessee has an option to purchase the remaining property required for Compressor Station 11A.

¹⁶ Tennessee Gas Pipeline Company, L.L.C., TGP Tariffs, Sixth Revised Volume, Sheet No. 14, FT-A Rates - Firm Transportation, 11.0.0 and Sheet No. 15, 13.00.

in Tennessee's settlement in Docket No. RP95-112-017¹⁷ and re-affirmed in Tennessee's latest settlement in Docket No. RP15-990-000,¹⁸ and its existing onshore depreciation rate (including negative salvage) of 2.05 percent as approved in Docket No. RP15-990-000.

21. In its protest, Indicated Shippers argue that Tennessee must establish an incremental recourse rate for the project that includes the costs of the existing capacity reserved for the project.¹⁹ If the cost of that capacity is included in calculating an incremental rate for project service, Indicated Shippers assert that the project costs will exceed the project revenues, thus mandating an incremental rate for the project. We disagree. Commission policy requires that for an NGA section 7 proceeding certifying new facilities, incremental rates should be designed to reflect only the incremental costs associated with the new facilities and should not reflect the reallocation of costs related to existing facilities or other common costs.²⁰ Thus, we find that Tennessee was correct to exclude costs associated with the reserved existing capacity.²¹

22. The Commission staff has calculated an illustrative incremental reservation charge based on the project's cost of service and incremental capacity. These calculations show that the incremental reservation charge would be lower than Tennessee's existing Rate Schedule FT-A reservation charge. Accordingly, we approve Tennessee's request to charge its existing reservation and commodity charges under Rate Schedule FT-A.

¹⁷ *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997).

¹⁸ *Tennessee Gas Pipeline Co., L.L.C.*, 152 FERC ¶ 61,009 (2015).

¹⁹ Protest of Indicated Shippers at 3 (citing *Transcontinental Gas Pipeline Co., L.L.C.*, 128 FERC ¶ 61,223, at P 17 n. 6 (2009) (*Transco*) (approving an incremental rate that included the cost of the reserved capacity, calculated based on the currently effective system rate for that capacity)).

²⁰ See *Transcontinental Gas Pipe Line Co., L.L.C.*, 141 FERC ¶ 61,091, at P 27 (2012). Issues related to the allocation of reserved capacity costs are appropriately addressed in Tennessee's next NGA section 4 general rate proceeding.

²¹ The Commission recognizes that in the *Transco* proceeding the Commission accepted the pipeline's proposal to include the costs of reserved capacity in the calculation of the incremental rates. However, in that proceeding, such a rate treatment was not protested and the Commission approved the rates as proposed.

2. Fuel

23. Tennessee proposes to charge its generally applicable system-wide fuel and loss retention percentages and electric power rates under Rate Schedule FT-A for the Lone Star Project. As noted above, the Tennessee Customer Group, Con Edison, and Indicated Shippers protest Tennessee's proposal to use the general system fuel and electric power rates for the Lone Star Project. They assert that Tennessee did not provide a fuel study verifying that Tennessee's proposal to charge system fuel rates for the project shippers is justified.

24. In its November 23, 2016 answer, Tennessee provided a fuel study to show the impact the project will have on its system fuel use.²² The fuel study shows that use of its system fuel rate for the project's capacity will have the effect of reducing fuel use on its system, resulting in reduced general system fuel rates. Therefore, Tennessee's request to charge its general system fuel and electric power rates for service on the Lone Star Project facilities is approved.

3. Predetermination of Rolled-in Rates

25. Tennessee requests a predetermination of rolled-in rate treatment for the costs associated with the project.²³ Tennessee states that a presumption of rolled-in rate treatment is appropriate because the project revenues exceed the incremental cost of the project by \$4.7 million in year 1 and by \$16.5 million in total in the first three years of project operation.

26. Indicated Shippers and the Tennessee Customer Group assert that Tennessee has not justified its proposal for a predetermination that it may roll the cost of the project into its recourse base rates in a future NGA section 4 general rate case. Indicated Shippers claim that Tennessee's cost and revenue analysis is flawed because it does not include the cost of the existing capacity Tennessee reserved for the project. The Tennessee Customer Group argues that Commission policy requires the elimination of all revenues related to new service that can be provided through Tennessee's existing facilities.²⁴ In addition, it questions whether there is additional existing capacity available on Tennessee's 100 Line that could be utilized to serve the project shipper, which would further reduce the revenues that should be used in justifying a predetermination of rolled-in pricing.

²² Tennessee's November, 23, 2016, Answer to Protests, Attachment 2.

²³ Tennessee's Application at 11.

²⁴ Tennessee Customer Group September 22, 2016 Protest at 2 (citing *Florida Gas Transmission Co.*, 154 FERC ¶ 61,256, at P 23 (2016) (*Florida Gas*)).

Finally, the Tennessee Customer Group states that the Commission should not grant a predetermination of rolled-in pricing here because Tennessee required a “significantly less rigorous” creditworthy standard for the project shipper than Tennessee’s tariff requires.

27. In its answer, Tennessee disputes Indicated Shippers’ assertion that the Commission requires pipelines to include costs of reserved capacity in a roll-in analysis. Tennessee states that including the costs of reserved capacity in its roll-in analysis would result in these costs being counted twice – once in the initial rates approved in the certificate proceeding of the existing facilities and second, in utilizing those existing facilities for the instant project. Tennessee also disagrees with the Tennessee Customer Group’s argument that Tennessee should exclude all revenues related to the new service that will be provided using Tennessee’s existing facilities to support its request for a predetermination of rolled-in rate treatment. Tennessee claims that the Tennessee Customer Group has misapplied the Commission’s ruling in *Florida Gas*, arguing that previous Commission orders show it is appropriate to include the revenues associated with the reserved capacity in a roll-in analysis when the capacity is integral to enabling the existing capacity to serve the project shipper.²⁵ Tennessee also disputes the Tennessee Customer Group’s contentions that it has additional excess capacity that could be used to serve the project shipper and that its additional credit assurances from the project shipper are inconsistent with its tariff.

28. To receive a predetermination of rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed 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 section 4 general rate proceeding, the Commission compares the cost of the project to the revenues generated using actual contract volumes and either the maximum recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.²⁶ In Exhibit N, Tennessee has compared the incremental cost of the project to the revenues generated using the lower reservation recourse rate. Tennessee’s analysis shows that projected revenues will exceed the costs of the project.

²⁵ Tennessee’s November 23, 2016 Response to Protests at 6 (citing *ANR Pipeline Co.*, 156 FERC ¶ 61,212, at P 22, n.22 (2016)).

²⁶ See *Natural Gas Pipeline Co. of America, LLC*, 154 FERC ¶ 61,220, at P 25 (2016).

29. We also find that Tennessee's cost and revenue analysis is appropriate and reject Indicated Shippers' argument that Tennessee should include the costs of reserved capacity. When the Commission makes an upfront determination in a certificate proceeding as to whether a project should receive rolled-in rate treatment, it does so based on the specific costs associated with the facilities being constructed. As addressed in the initial recourse rate discussion above, this analysis properly excludes the cost of reserved capacity, consistent with Commission policy.

30. We also disagree with Tennessee Customer Group's argument that Tennessee must exclude revenues from the reserved capacity in its cost/revenue analysis. The *Florida Gas* proceeding cited by the Tennessee Customer Group is inapposite. In *Florida Gas*, the pipeline was capable of providing an incremental portion of the project service using only existing capacity, without construction of any of the proposed project facilities. Indeed, pursuant to its agreement with the shipper, Florida Gas intended to provide such service prior to the construction of the project facilities.²⁷ Under those circumstances, the Commission found that the applicant improperly included "revenues generated using the contract volumes for both the service being provided using the capacity made available by the project facilities and the service [Florida Gas] is able to provide using only existing capacity."²⁸ In contrast to *Florida Gas*, the new project facilities proposed by Tennessee are integral to enabling the existing capacity to be used to serve the project shipper.²⁹ As confirmed by Commission staff's engineering review the additional capacity created by the new facilities is necessary to allow the reserved unsubscribed capacity to be utilized to meet the demands of the project shipper.³⁰ Therefore, we dismiss Tennessee Customer Group's protest and conclude that Tennessee appropriately included revenues associated with the reserved capacity in its cost/revenue analysis.

²⁷ *Florida Gas*, 154 FERC ¶ 61,256 at P 5.

²⁸ *Id.* P 23.

²⁹ See *ANR Pipeline Co.*, 156 FERC ¶ 61,212, at P 22, n.22 (2016) (granting a predetermination of rolled-in rate treatment where project revenues included revenues from existing capacity where the construction proposed is integral to enabling the existing capacity to be used to serve the project shipper).

³⁰ Commission staff's conclusion is based on its review of Tennessee's flow diagrams and corresponding steady-state computer models supporting each flow diagram, as well as Tennessee's November 23, 2016 Response to Protestors, and its response to Commission staff's June 27, 2017 Data Request. See August 19, 2016 Application at Exhibit G; Tennessee November 23, 2016 Answer at 8-9; Tennessee's response to Commission staff's June 27, 2017 Data Requests.

31. Furthermore, in its protest, Tennessee Customer Group suggests that Tennessee may have additional existing unsubscribed capacity on the 100 Line that could be used to provide service to the project shipper.³¹ In its answer, Tennessee stated that the Group misinterpreted Tennessee's Exhibit G flow diagrams and confirmed that there is no excess capacity on this segment of its system that could be used to provide service to the project shipper.³² Upon review of the revised engineering information submitted by Tennessee, Commission staff confirmed that there is no additional unsubscribed capacity available in the project area on Tennessee's system to service the project shipper.

32. Finally, we disagree that the creditworthiness of the project shipper precludes a predetermination of rolled-in rate treatment. In its answer, Tennessee responds that its credit assurance from Corpus Christi Liquefaction is consistent with the GT&C of its tariff and Open Season Announcement. Section 4.9 of the GT&C of Tennessee's tariff provides that if a shipper is deemed uncreditworthy by Tennessee, Tennessee may require an irrevocable letter of credit, or other mutually agreeable form of credit, from the shipper in an amount up to the cost of the facilities. Tennessee states that having deemed Corpus Christi Liquefaction uncreditworthy, it imposed additional credit obligations on the project shipper.

33. In the Commission's policy statement on creditworthiness, the Commission recognized that for new construction projects, pipelines need sufficient collateral from non-creditworthy shippers to ensure, prior to investment of significant resources in the project, that it can protect its financial commitment to the project.³³ However, the

³¹ Tennessee Customer Group September 22, 2016 Protest at 3.

³² Tennessee November 23, 2016 Answer at 8-9. Tennessee stated that the Exhibit G filed with its application erroneously transposed flows, i.e. the flows shown on the 'Existing Facilities' flow diagram correspond to the 'Existing and Proposed Facilities' flow diagram and vice versa. As a part of Tennessee's answer to the protest, Tennessee submitted a revised Exhibit G which corrects this transcription error. Tennessee November 23, 2016 Answer at Attachment 1. *See also* Tennessee June 27, 2017 Data Response.

³³ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412, at P 17 (2005) (2005 Policy Statement).

Commission deemed it inappropriate to set a predetermined collateral amount because risks may vary on specific projects.³⁴ Therefore, pipelines are permitted to include collateral requirements in precedent agreements that apply to initial shippers that reflect the risk of the project should the initial shipper default.

34. After finding that Corpus Christi Liquefaction did not satisfy the criteria for creditworthiness for shippers, Tennessee imposed additional credit obligations on the project shipper in the form of greater collateral in the precedent agreement. The collateral obligations that Tennessee has imposed on Corpus Christi Liquefaction are consistent with the Commission's 2005 Policy Statement and with Tennessee's own tariff creditworthiness provisions. Under these circumstances, we find that Tennessee Customer Group's concerns that in the future, system customers may bear the risks of the project are unfounded. Accordingly, the Commission grants a predetermination of rolled-in rate treatment in Tennessee's next NGA section 4 general rate case, absent any significant changes in circumstances.

4. Reporting Incremental Costs and Revenues

35. Tennessee must keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project in the same manner as is required by section 154.309 of the Commission's regulations.³⁵ The books should be maintained with applicable cross-reference and the 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 the information must be provided consistent with Order No. 710.³⁶

5. Negotiated Rates

36. Tennessee and the project shipper have agreed to negotiated rates. Tennessee must file either the negotiated rate agreements or tariff records setting forth the essential

³⁴ *Id.*

³⁵ 18 C.F.R. §154.309 (2017).

³⁶ *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

elements of the agreements in accordance with the Alternative Rate Policy Statement³⁷ and the Commission's negotiated rate policies.³⁸ Such filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

6. Non-Conforming Provisions

37. Tennessee provides, in Exhibit I of the Application, copies of the Corpus Christi Liquefaction Service Agreement (Service Agreement). Tennessee states that the proposed Service Agreement contains provisions that deviate from its *pro forma* Rate Schedule FT-A transportation Service Agreement. Tennessee states that the differences between the Service Agreement and the *pro forma* agreement reflect the primary contractual benefits provided to the project shipper in exchange for agreeing to provide contractual support for the Lone Star Project. Tennessee requests the Commission make an upfront determination for each identified non-conforming provision in as far as they are not unduly discriminatory in nature.

38. Tennessee states that Exhibit A to the Service Agreement includes an extension right that gives the project shipper a contractual right to extend the 15-year primary term of its firm transportation service agreement for an additional 5-year term. Tennessee also states that there are agreed-to contractual right-of-first-refusal (ROFR) provisions identified in Exhibit A. Tennessee asserts that these provisions are not material deviations from its *pro forma* Service Agreement because Article XXXVI of the General Terms and Conditions (GT&C) of its tariff permits Tennessee to negotiate extension rights and/or contractual ROFR provisions with a shipper. Tennessee requests an upfront determination from the Commission that even if the extension right and contractual ROFR provisions could be construed to constitute material deviations from its *pro forma* Service Agreement, the extension right and contractual ROFR provisions are not unduly discriminatory and thus permissible.

³⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996) *petition denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

³⁸ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

39. Moreover, Tennessee seeks an upfront determination that other differences between the *pro forma* and the Service Agreement are not unduly discriminatory including:

1. The Service Agreement contains “Whereas” clauses that describe the Precedent Agreement and the specific transaction between Tennessee and the Project Shipper, while the *pro forma* agreement does not.
2. Article II (Sections 2.1 and 2.2) of the Service Agreement addresses regulatory authorization of the Lone Star Project facilities and the commencement date of the Service Agreement, which is tied to the commencement date of the Lone Star Project facilities. Article II of the *pro forma* agreement does not contain this regulatory authorization or commencement date language.
3. Article IV of the *pro forma* agreement contemplates that the facilities necessary to provide the transportation service for Corpus Christi Liquefaction are already in place. However, Article IV of the Service Agreement indicates that Tennessee will construct the Lone Star Project facilities to provide transportation service for the Corpus Christi Liquefaction.
4. Sections 6.1, 11.1(a), and 12.1 of the Service Agreement have been modified (as compared to the *pro forma* agreement) to reflect the commencement date for the Lone Star Project. These provisions in the Service Agreement reflect the fact that Tennessee must construct the Lone Star Project facilities in order to provide service to Corpus Christi Liquefaction.

40. In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.³⁹ However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

³⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001); *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001).

41. The Commission agrees with Tennessee that the contractual ROFR set forth in its Service Agreement with the project shipper represents permissible conforming provisions that are not material deviations. Article XXXVI of Tennessee's GT&C sets forth a series of provisions that Tennessee may include in its agreements without those provisions being considered non-conforming in nature. The negotiation of contractual ROFRs is included in Article XXXVI, therefore making it conforming.

42. However, we disagree with Tennessee that its proposed extension rights included in the agreement similarly are provided for by Article XXXVI of its GT&C and are thus conforming provisions. Article XXXVI of Tennessee's GT&C provides for the negotiation of contract extensions "prior to the expiration of the term of an Agreement." Under this provision, Tennessee and a shipper may mutually agree to extend the term of an agreement during the effectiveness of that agreement. That is not the case in the instant agreement. Here, Tennessee is proposing to provide the shipper with an extension before the agreement becomes effective. Since this provision does not reflect the same extension right provided in Article XXXVI of Tennessee's GT&C, the provision is non-conforming in nature. We also find that the incorporation of the other provisions listed above are non-conforming provisions in the shipper's Service Agreement and constitute material deviations from Tennessee's *pro forma* Service Agreement.

43. 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.⁴⁰ While we find that the proposed extension rights and other provisions identified above are non-conforming, we nevertheless find that they 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.⁴¹

44. At least 30 days, but not more than 60 days, before providing service to the project shipper under a non-conforming agreement, Tennessee must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Tennessee's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.⁴² 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

⁴⁰ See, e.g., *Tennessee Gas Pipeline Co.*, 144 FERC ¶ 61,219 (2013).

⁴¹ See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006); *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

⁴² 18 C.F.R. § 154.112 (2017).

of the parties under the tariff or service agreement.⁴³ This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

C. Environmental Impacts

45. On October 12, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lone Star Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*⁴⁴ and sent to interested persons and entities including affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

46. The Commission received comments from a number of local residents in response to the NOI. Based on the level of public interest, the Commission issued a *Notice of Public Scoping Session for the Proposed Lone Star Project and Request for Comments on Environmental Issues* and extended the scoping period until December 21, 2016. The scoping session was held on December 13, 2016 in Edna, Texas, to provide an opportunity for agencies and the general public to learn about the project and participate in the environmental analysis by identifying issues to be addressed in the EA.

47. In response to the notices and public scoping session, the Commission received various written and oral comments from the public, along with written comments submitted by the U.S. Environmental Protection Agency (EPA). The primary issues raised by commenters and the EPA were alternative site locations, air quality and noise impacts, impacts from nighttime traffic and lighting, impacts on water resources, industrialization, impacts on property values, and pipeline safety.

48. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an EA for Tennessee's Lone Star Project. The analysis in the EA addresses geology, soils, ground and surface water, wetlands, vegetation, wildlife, special status species, land use, recreation, visual resources, socioeconomics, cultural resources, air quality, noise, vibration, reliability and safety, cumulative impacts, and

⁴³ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission consistent with section 154.112 of the Commission's regulations. See *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 (2015).

⁴⁴ 81 Fed. Reg. 72,043 (October 19, 2016).

alternatives. All substantive comments received in response to the NOI and raised during the scoping process were addressed in the EA.

49. The EA was issued for a 30-day comment period and placed into the public record on May 26, 2017. During the comment period the Commission received comments on the EA from one affected landowner (Nathaniel Griffin) and the EPA. In its comments the EPA concurred that the project should not adversely affect the quality of the environment and stated that it has no objection to a finding of no significant impact.

50. Mr. Griffin, who shares a common property boundary with the proposed Compressor Station 3A, requested clarification and additional information on matters pertaining to the project's proximity to prime farmland, the prospect of removing an existing bridge currently used to access nearby land, the planned use of undeveloped portions of the project site, fencing, visual screening, cultural resources, and impacts on existing noise levels.

51. With respect to Mr. Griffin's request for a map displaying the relative locations of prime farmland at Compressor Station 3A, we refer Mr. Griffin to Section B.2.1 of the EA.⁴⁵ Section B.2.1 reviews the impacts on prime farmland at the project sites, and figure 7A-1 of Tennessee's application shows the location of prime farmland by soil type at Compressor Station 3A.

52. As referenced above, Mr. Griffin asks Tennessee to remove an existing bridge that crosses the drainage canal running parallel to Route 188 once Tennessee constructs a proposed bridge that will cross a proposed culvert to connect with the project's new access road. The existing bridge is not on property to be utilized in construction or operation of the project and Tennessee does not propose to remove the existing bridge during construction of Compressor Station 3A.

53. Mr. Griffin questions whether the land outside of the proposed fenced parcel for Compressor Station 3A would remain suitable for cattle grazing and, if so, whether the costs of a joint fencing project could be shared with Tennessee. Tennessee proposes perimeter fencing surrounding Compressor Station 3A's operational footprint and not surrounding its property boundary.⁴⁶ If Mr. Griffin remains interested in cattle

⁴⁵ EA at 15.

⁴⁶ As stated in section A.7 of the EA, Tennessee has secured an option to purchase an approximately 111.8-acre parcel of land on which Compressor Station 3A will be located. Tennessee states that construction of Compressor Station 3A will disturb approximately 72.2 acres of land and approximately 13 acres will be permanently maintained for operation of the facility (including the access road), while the fenced compressor station site will account for approximately 12.5 acres.

pasturing on the range land within the property line, he would need to negotiate directly with Tennessee.

54. Mr. Griffin requests a copy of the visual screening plan recommended in the EA and required in Environmental Condition 12 in Appendix B to this order. When Tennessee files the required visual screening plan, it will be publically available on the project docket.

55. With respect to Mr. Griffin's request to specify the aboveground historic resources within a 0.25-mile radius around Compressor Station 3A, we refer him to table 4-3 of Tennessee's application which lists three residential properties built circa 1940, 1965, and 1966 that were identified as historic resources. The EA concluded that these properties were not eligible for listing on the National Register of Historic Places.⁴⁷

56. Lastly, Mr. Griffin seeks additional information about the noise impacts on his property from the operation of Compressor Station 3A. The current ambient sound levels of the closest noise sensitive area (NSA 1) are 54.6 decibels on the A-weighted scale (dBA) day-night sound level (L_{dn}). The results of Tennessee's noise survey indicate that operation of Compressor Station 3A would result in noise levels of 55.2 dBA L_{dn} at NSA 1, an increase of 0.6 dBA. In accordance with Environmental Condition 13 in Appendix B of this order, Tennessee is required to file surveys following commencement of service of the compressor stations to confirm Tennessee's predicted noise levels and ensure that the actual noise levels attributable to the compressor stations do not exceed 55 dBA L_{dn} at any NSA.

57. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Tennessee's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Tennessee to construct and operate the Lone Star Project, as described in this order and in the application in Docket No. CP16-496-000.

⁴⁷ EA at 39.

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

- (1) Tennessee's completing the authorized construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Tennessee's compliance with all applicable Commission regulations, including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Tennessee's compliance with the environmental conditions in Appendix B to this order.

(C) Tennessee's request to charge system recourse rates for transportation service on the project is approved, as conditioned above in this order.

(D) Tennessee's request to charge its currently effective fuel and loss retention percentages and electric power cost rates is approved, as described above.

(E) Tennessee's request for a predetermination supporting rolled-in rate treatment for the costs of the Lone Star Project in a future NGA general section 4 proceeding is granted, as described above, barring any significant change in circumstances.

(F) Tennessee shall file either the negotiated rate agreements or tariff records setting forth the essential elements of the agreements no later than 60 days and no earlier than 30 days before the proposed effective date for such rates.

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

(H) Tennessee shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

(I) 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

Docket No. CP16-496-000

- 20 -

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

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

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Interventions

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

Anadarko Energy Services Company; Chief Oil & Gas LLC; ConocoPhillips Company; Direct Energy Business Marketing, LLC; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; and Shell Energy North America (U.S.) Inc. (Indicated Shippers) (filed jointly)

National Fuel Gas Distribution Corporation
 Calpine Energy Services, L.P.
 Piedmont Natural Gas Company, Inc.
 Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, et. al.
 National Grid Gas Delivery Companies
 NJR Energy Services Company
 New Jersey Natural Gas Company
 PSEG Energy Resources & Trade LLC
 New York State Electric & Gas Corporation
 Joseph W Bitter
 Support of Range Resources-Appalachia LLC
 Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc.
 Corpus Christi Liquefaction, LLC
 Chevron U.S.A. Inc.
 Shell Energy North America (US), L.P.
 Duke Energy Ohio, Inc.,
 Atmos Energy Marketing LLC
 Atmos Energy Corporation
 Exelon Corporation

Appendix B

Environmental Conditions

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

1. Tennessee Gas Pipeline Company, LLC (Tennessee) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary 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, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order, and 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;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 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 exercise of eminent domain authority granted under the 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 right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way to transport a commodity other than natural gas.

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by 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 resources 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**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per facility, 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 Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar Project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Tennessee shall employ at least one EI. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Tennessee's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints 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 Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
9. Tennessee must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Tennessee must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Tennessee must receive written authorization from the Director of OEP **before placing the new compressor stations into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with

- all applicable conditions; or
 - b. identifying which of the conditions in the Order Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
- 12. **Prior to construction**, Tennessee shall file with the Secretary a visual screening plan for the Compressor Stations 3A and 11A that includes vegetative screening of the proposed compressor station sites, for review and written approval by the Director of OEP.
- 13. Tennessee shall file with the Secretary noise surveys for Compressor Stations 3A and 11A **no later than 60 days** after placing each station into service. If a full power load condition noise survey is not possible, Tennessee shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at Compressor Station 3A or 11A under interim or full power load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive area, Tennessee shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.

Document Content(s)

CP16-496-000.DOCX.....1-26