

154 FERC ¶ 61,191  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP14-529-000

ORDER ISSUING CERTIFICATE

(Issued March 11, 2016)

1. On July 31, 2014, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to construct and operate pipeline facilities in Albany County, New York; Berkshire and Hampden Counties, Massachusetts; and Hartford County, Connecticut, and modify an existing compressor station in Hampden County, Massachusetts (Connecticut Expansion Project). For the reasons discussed below, we grant Tennessee's requested certificate authorizations, subject to conditions.

**I. Background**

2. Tennessee,<sup>3</sup> a Delaware limited liability company, is a natural gas company within the meaning of section 2(6) of the NGA.<sup>4</sup> Tennessee operates an interstate natural gas transmission system that extends from Texas and Louisiana through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2015).

<sup>3</sup> Tennessee is a subsidiary of Kinder Morgan Energy Partners, L.P.

<sup>4</sup> 15 U.S.C. § 717a(6) (2012).

## II. Proposal

3. Tennessee proposes to construct and operate three pipeline loops, totaling 13.42 miles in length, on its existing 200 and 300 Lines:<sup>5</sup> (1) the New York Loop, a 1.35-mile-long, 36-inch-diameter loop on the 200 Line near Bethlehem, New York; (2) the Massachusetts Loop, a 3.81-mile-long, 36-inch-diameter loop on the 200 Line near the Town of Sandisfield, Massachusetts; and (3) the Connecticut Loop, an 8.26-mile-long, 24-inch-diameter loop on the 300 Line, which will extend from Compressor Station 261<sup>6</sup> in Agawam, Massachusetts, to the East Granby Meter Station near Suffield and East Granby, Connecticut.<sup>7</sup>

4. Tennessee also proposes to make minor modifications at its existing Compressor Station 261 in Hampden County, which would not increase the station's horsepower. The modifications include installing a new bi-directional pig launcher/receiver and valve, miscellaneous station piping, valves, fittings, and an insertion meter, which are necessary to interconnect the Connecticut Loop to the existing Compressor Station 261 piping. In addition, Tennessee proposes to install additional appurtenant facilities along the New York, Massachusetts, and Connecticut Loops, including a mainline valve, cathodic protection, and new pig launchers and receivers, and to relocate two existing pig receiver facilities to accommodate internal inspection of the proposed pipeline loops. Tennessee estimates that the cost of the project will be \$85,670,181.

5. The proposed Connecticut Expansion Project will enable Tennessee to provide 72,100 dekatherms (Dth) per day of firm transportation service from its interconnection with Iroquois Gas Transmission System, L.P. in Wright, New York, to Zone 6 delivery points on Tennessee's existing 200 and 300 Lines in Hartford County, Connecticut.

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<sup>5</sup> The 200 Line consists of 24- to 36-inch-diameter pipelines extending from the suction side of Compressor Station 200 in Greenup County, Kentucky, through Ohio, Pennsylvania, and New York, to termini in Massachusetts, New Hampshire, and Rhode Island. The 300 Line consists of a 24- and a 30-inch-diameter pipeline extending from the discharge side of Compressor Station 219 in Mercer County, Pennsylvania, to Compressor Station 261 in Agawam, Massachusetts.

<sup>6</sup> Compressor Station 261 is also known as the Agawam Compressor Station.

<sup>7</sup> See Tennessee April 17, 2015 Supplemental Information Filing at 2 (modifying its proposal by increasing the length of the proposed Connecticut Loop from 8.10 miles to 8.26 miles).

6. Tennessee states that, on May 28, 2013, prior to holding an open season, it executed binding precedent agreements with three anchor shippers – Connecticut Natural Gas Corporation (Connecticut Natural), Southern Connecticut Gas Company (Southern Connecticut), and Yankee Gas Services Company (Yankee) – for all of the proposed project capacity and granted them certain contract extension rights in exchange for their early commitment to the project.<sup>8</sup> Subsequently, between July 10 and July 31, 2013, Tennessee held a binding open season to solicit further interest in capacity on the project. Only the anchor shippers offered bids: Connecticut Natural for 35,000 Dth per day, Southern Connecticut for 10,000 Dth per day, and Yankee for 27,100 Dth per day. Tennessee also solicited interest in turn-back capacity on its existing system but received no bids.<sup>9</sup>

7. Tennessee proposes to establish an incremental rate as the initial recourse rate under Rate Schedule FT-A for firm transportation service on the project facilities. The three anchor shippers elected to pay a negotiated rate for the proposed transportation service. Tennessee requests that the Commission approve the negotiated contract provisions of its precedent agreements with the anchor shippers as permissible material deviations from the form of service agreement contained in Tennessee’s FERC Gas Tariff.

### **III. Notice, Interventions, and Comments**

8. Notice of Tennessee’s application was published in the *Federal Register* on August 20, 2014, with interventions, comments, and protests due on or before September 4, 2014.<sup>10</sup> The parties listed in Appendix A filed timely, unopposed motions to intervene. The Connecticut Department of Energy and Environmental Protection and the Commonwealth of Massachusetts Department of Conservation and Recreation filed

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<sup>8</sup> The anchor shippers are all local distribution companies (LDCs).

<sup>9</sup> Pursuant to section 5.8 of Article No. XXVI of the General Terms and Conditions of its FERC Gas Tariff, Tennessee states that it reserved 32,000 Dth per day of existing firm transportation capacity on its system from Tennessee’s mainline valve (MLV) 249 in Wright, New York, to the discharge side of MLV 261 in Agawam, Massachusetts, including 32,000 Dth per day at the receipt meter located at Wright, New York (#01-2181). Tennessee states that the reservation reduced the facilities it needed to construct for the project. Tennessee posted a notice of the unsubscribed capacity that was reserved on its electronic bulletin board system on July 16, 2013.

<sup>10</sup> 79 Fed. Reg. 49,296 (2014).

timely notices of intervention. Timely, unopposed motions to intervene and notices of intervention are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.<sup>11</sup>

9. The New York State Department of Environmental Conservation (NYSDEC) filed an untimely notice of intervention. Leigh Rae, Darcey Sutula Parker, and Christine Shearman filed untimely motions to intervene. We will grant the late-filed notice of intervention and motions to intervene because they do not unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.<sup>12</sup>

10. We received numerous comments in opposition to Tennessee's proposals.<sup>13</sup> These comments were addressed in the Environmental Assessment (EA) prepared for the project.

#### **IV. Discussion**

11. Since 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.<sup>14</sup>

##### **A. Certificate Policy Statement**

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>15</sup> 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.

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<sup>11</sup> 18 C.F.R. § 385.214(c) (2015).

<sup>12</sup> *See id.* § 385.214(d).

<sup>13</sup> On September 30, 2014, Tennessee filed an answer to the adverse comments.

<sup>14</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

<sup>15</sup> *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).

The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from 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. 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.

14. 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. Tennessee has entered into long-term precedent agreements with Connecticut Natural, Southern Connecticut, and Yankee for 100 percent of the design capacity of the project. There will be a separate incremental recourse rate for transportation service using the Connecticut Expansion Project's facilities that is designed to recover the full cost of the expansion and exceeds the existing system rate for service. Thus, we find Tennessee's existing customers will not subsidize the project.

15. The proposed project will not adversely affect Tennessee's existing customers because the project will not degrade any existing service. The project will not adversely impact existing pipelines and their captive customers because the project is not intended to replace existing customers' service on any other existing pipeline. Further, no pipeline or their captive customers have protested Tennessee's proposal. Consequently, we find that there will be no adverse impacts on Tennessee's existing customers or other pipelines or their captive customers.

16. Because Tennessee proposes to site the pipeline loops and appurtenant aboveground facilities within or adjacent to existing right-of-ways and limit the compressor station modifications to the existing footprint of Compressor Station 261, we find that Tennessee has minimized impacts on landowners and surrounding communities.

17. Tennessee has entered into precedent agreements for all of the capacity to be created by the project. Based on the benefits of Tennessee's proposal, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Tennessee's proposal, as conditioned in this order.

## **B. Rates**

### **1. Initial Recourse Transportation Rate**

18. Tennessee proposes an initial incremental recourse rate under its existing Rate Schedule FT-A for firm transportation service. The incremental recourse rate consists of: (1) a monthly reservation charge of \$19.3689 per Dth; (2) a commodity charge of \$0.0000 per Dth; (3) applicable existing system demand and commodity surcharges; and (4) applicable existing fuel, lost and unaccounted-for, and electric power cost charges. Although it is proposing a cost-based recourse rate for the incremental service, Tennessee states that the anchor shippers have agreed in binding precedent agreements for firm transportation service under individual negotiated rate agreements. Tennessee states it will file the negotiated rate agreements, as specified by the Commission's regulation.

19. Tennessee's proposed base monthly reservation charge of \$19.3689 per Dth was calculated by dividing the first year cost of service of \$16,758,000 by 865,200 Dth (72,100 Dth per day times 12 months). Tennessee states the cost of service reflects the income tax rates, capital structure, and rate of return approved in its rate settlement in Docket No. RP95-112-000,<sup>16</sup> and reaffirmed in its rate settlement in Docket No. RP11-1566-000.<sup>17</sup> In addition, Tennessee states it used a straight-line depreciation rate of 3.33 percent based on an estimated useful life of the Connecticut Expansion Project facilities of 30 years.

20. Tennessee proposes to charge the applicable general system rate under Rate Schedule IT for any interruptible service rendered as a result of the new capacity available on the Connecticut Expansion Project.

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<sup>16</sup> *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,117 (2001); *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997).

<sup>17</sup> *Tennessee Gas Pipeline Co., LLC*, 137 FERC ¶ 61,182 (2011).

21. We have reviewed Tennessee's proposed cost of service, incremental base reservation charge, and rate for interruptible service and find that they are reasonable. Because the proposed incremental monthly reservation charge of \$19.3689 Dth is higher than the generally-applicable Rate Schedule FT-A base reservation charge of \$5.6256 Dth for transportation from Zones 5 to 6 on its system, Tennessee's existing customers will not be subsidizing the project. Thus, we will accept Tennessee's proposed incremental reservation rate and direct Tennessee to file tariff records that are consistent with the *pro forma* tariff records contained in Tennessee's filing between 30 and 60 days prior to the date the project facilities go into service. Our policy requires a pipeline to use its current system IT rate as the maximum recourse rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.<sup>18</sup>

22. We will, however, direct Tennessee to set its incremental commodity charge at its system daily commodity charge because its proposed daily commodity charge is \$0.0000 per Dth, which is less than its generally-applicable commodity charge of \$0.0549 per Dth for transportation from Zones 5 to 6 on its system.

## **2. Non-Conforming Provisions**

23. In addition to the non-conforming provisions identified in the precedent agreements discussed above, Tennessee states that the proposed service agreements with the anchor shippers deviate from its Rate Schedule FT-A *pro forma* service agreement because they: (1) contain "Whereas" clauses that describe the precedent agreements; (2) address the commencement date of the service agreements; (3) indicate that Tennessee will construct the project facilities to provide service; (4) reflect the commencement date and/or address the need for acceptable regulatory authorization of the project; (5) contain no language through which individual rate components may be adjusted downward or upward (because the anchor shippers have agreed to pay negotiated rates); and (6) provide that the service agreements shall supersede and cancel the precedent agreements. Further, Tennessee states that sections 1.1 and 6.3 of the service agreements contain minor, non-substantive deviations from the text of the *pro forma* agreement.

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<sup>18</sup> See, e.g., *Dominion Transmission, Inc.*, 152 FERC ¶ 61,138, at P 20 (2015); *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010).

24. In section 12.1 and Exhibit A of the service agreements with the anchor shippers,<sup>19</sup> Tennessee proposes a one-time contractual right to extend the 15-year primary term of the firm transportation service agreements for a 5-year term at the same negotiated rate levels or the applicable maximum recourse rate set forth in its tariff. Tennessee requests an upfront determination from the Commission that even if the extension right provision could be construed to constitute a material deviation from its *pro forma* service agreement, the extension right provisions are not unduly discriminatory.<sup>20</sup>

25. The non-conforming provisions described above in the unexecuted service agreements constitute material deviations from Tennessee's *pro forma* service agreement. However, we have found in the past that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to ensure the viability of a project.<sup>21</sup> We find the non-conforming provisions identified by Tennessee are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.<sup>22</sup> As discussed further below, when Tennessee files its non-conforming service agreements, we will require it to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

26. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Tennessee must file an executed copy of the non-conforming agreement identifying the agreement as a non-conforming agreement consistent with section 154.112 of the Commission's regulations.<sup>23</sup> In

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<sup>19</sup> See Exhibit I of the Application.

<sup>20</sup> On February 18, 2015, in response to a data request, Tennessee submitted public copies of both clean and redline/strikeout versions of the unexecuted service agreements containing the extension right provision. Tennessee also redacted certain information from the service agreements but states that the redacted information is not applicable to its request for an upfront determination from the Commission.

<sup>21</sup> See, e.g., *Tennessee Gas Pipeline Co. L.L.C.*, 144 FERC ¶ 61,219 (2013); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

<sup>22</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,004 (2001).

<sup>23</sup> 18 C.F.R. § 154.112 (2015).

addition, we emphasize that the above determination relates only to those items described by Tennessee in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

### **3. Reporting Incremental Costs**

27. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable for all expansions for which incremental rates are approved.<sup>24</sup> We will require Tennessee to keep separate books and accounting of costs attributable to the Connecticut Expansion Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. 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 the information must be provided consistent with Order No. 710.<sup>25</sup> In addition, Tennessee will not be allowed to reflect in its system rates any of the costs associated with the reserved capacity.

#### **C. Environmental Analysis**

28. On October 10, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register*<sup>26</sup> and mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; potentially affected landowners; other interested individuals; and newspapers and libraries in the project area. The Commission received 139 comment letters prior to issuance of the NOI and 38 comment letters in response to the NOI.

29. On October 28, 29, and 30, 2014, Commission staff conducted public scoping meetings in East Granby, Connecticut; Sandisfield, Massachusetts; and Delmar, New York, respectively, to provide the public with an opportunity to learn more about the project and comment on environmental issues that should be addressed in the EA. In total, 43 individuals provided oral comments on the project at the Commission's three scoping meetings. The primary issues raised during the scoping process included the purpose and need for the project, safety, segmentation of Tennessee's expansion

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<sup>24</sup> *Id.* § 154.309.

<sup>25</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs., ¶ 31,267, at P 23 (2008).

<sup>26</sup> 79 Fed. Reg. 63,615 (2014).

projects, requests for an environmental impact statement (EIS) rather than an EA, effects of natural gas development activities, system alternatives, and impacts on lands protected under Article 97 of the Massachusetts State Constitution.<sup>27</sup>

30. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>28</sup> Commission staff prepared an EA for Tennessee's proposal. The New York State Department of Agriculture and Markets (NYSDAM) participated in the preparation of the EA as a cooperating agency. The EA addresses geology and soils; water resources; wetlands; fisheries, vegetation, and wildlife; threatened, endangered, and special status species; land use; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. All substantive environmental comments raised during the scoping process were addressed in the EA.

31. On October 23, 2015, the EA was issued for a 30-day comment period, mailed to all stakeholders on the Commission staff's environmental mailing list, and placed into the public record. The Commission received numerous comments on the EA. The Commission also received numerous comments in opposition to Tennessee's February 26, 2016 letter to the Commission, requesting a decision on its application. Substantive comments that require clarification to issues addressed in the EA are discussed in this order.

### **1. Procedural and Process Concerns**

32. Jean Atwater-Williams and Thelma Esteves request a 30-day extension of the comment period for the EA. Commission staff issued and mailed a *Notice of Availability of the Environmental Assessment for the Proposed Connecticut Expansion Project* on October 23, 2015,<sup>29</sup> informing the public of a comment period deadline of November 23, 2015.<sup>30</sup> The comment period was not extended, but in any event, Mses. Atwater-Williams and Esteves filed three comments on the EA, two of which were filed after the EA comment deadline. We considered their comments along with the other filed comments filed with the Commission. Thus, their requests are now moot.

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<sup>27</sup> MASS. CONST. art. 97.

<sup>28</sup> 42 U.S.C. §§ 4321 *et seq.* (2012). *See also* 18 C.F.R. pt. 380 (2015) (Commission's regulations implementing NEPA).

<sup>29</sup> 80 Fed. Reg. 66,524 (2015).

<sup>30</sup> Neither the Commission's NEPA implementing regulations nor CEQ regulations require a comment period for an EA.

33. Mass Audubon, a New England conservation group and affected landowner, maintains that Tennessee should complete consultation during the NEPA review to allow the public the opportunity to provide input and agencies to coordinate their review. The Commission has complied with the NEPA requirements for consultation and obtaining comments from jurisdictional agencies. Section 1501.4(b) of the Council on Environmental Quality (CEQ) regulations requires that agencies involve environmental agencies, applicants, and the public, to the extent practicable, in preparing an EA. Section 1508.9(a)(1) requires an EA to list agencies and persons consulted.<sup>31</sup> Here, Commission staff invited all affected federal agencies to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the project. The EA listed all the federal permits, licenses, and other entitlements that are needed to implement the project.<sup>32</sup>

34. The Commission staff does not wait for the issuance of federal, state and local permits to assess project impacts in order to make conclusions under NEPA. The issuance of federal, state, and local permits and approvals proceed on a parallel, but separate, review process under the purview of the respective agencies with jurisdiction. It is not practical, nor required, for the Commission to withhold its analysis and decisions until all permits are issued. In spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's EA or order without unduly delaying the project.<sup>33</sup> The Commission, however, will not authorize construction of the project until the applicable and required federal authorizations are received, as required by Environmental Condition 9 of this order. This includes permits under section 404 of the Clean Water Act and any federal authorizations and consultations required under federal law that are delegated to state agencies, such as air quality permits under the Clean Air Act, certifications under section 401 of the Clean Water Act,<sup>34</sup> and National Historic Preservation Act section 106 consultations with State Historic Preservation Offices.<sup>35</sup> The Commission takes this approach in order to make timely decisions on matters related

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<sup>31</sup> 40 C.F.R. § 1502.25(b) (2015).

<sup>32</sup> See Table A-7 in the EA at 26-29.

<sup>33</sup> See, e.g., *Crown Landing LLC*, 117 FERC ¶ 61,209, at P 26 (2006); *Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,277, at PP 225-231 (2002).

<sup>34</sup> 33 U.S.C. § 1341 (2012).

<sup>35</sup> 54 U.S.C.A. § 306108 (West 2016).

to our NGA jurisdiction that will inform project sponsors and other permitting agencies, as well as the public. This approach is consistent with the Commission's broad conditioning powers under section 7 of the NGA.

35. In addition, Mass Audubon comments that analyses regarding specific resources, such as wetlands and threatened and endangered species, that require consultation with federal agencies, were inadequate. We disagree. Commission staff consulted with both the New England and New York Districts of the U.S. Army Corps of Engineers (Corps) regarding impacts on wetlands and with the U.S. Fish and Wildlife Service (FWS) regarding impacts on federally-listed threatened and endangered species. Commission staff consulted with the FWS and developed a Biological Assessment for the dwarf wedgemussel. We find that Commission staff complied with consultation requirements.

## 2. **Purpose and Need**

36. CEQ regulations require that an EA must provide a brief discussion of the need for the proposal.<sup>36</sup> Courts have upheld federal agencies' use of applicants' identified project purpose and need as the basis for evaluating alternatives.<sup>37</sup> This general principle is subject to the admonition that a project's purpose and need may not be so narrowly defined as to preclude consideration of what may actually be reasonable alternatives.

37. Several commentors, including Sandisfield Taxpayers Opposed to the Pipeline (STOP) and Mses. Atwater-Williams, and Esteves, assert that the EA defined the purpose of the proposed project too narrowly and that the project is not needed because the northeast region is reducing its demand for natural gas in favor of renewable energy. They cite the Massachusetts Attorney General's Office's (Massachusetts AG) Power System Reliability in New England Study (Massachusetts AG Study)<sup>38</sup> and the Environmental Protection Agency's (EPA) Clean Power Plan for support. Connecticut Natural, Southern Connecticut, and Yankee filed comments reiterating the need for 72,100 Dth per day of firm transportation service.

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<sup>36</sup> See 40 C.F.R. § 1508.9(b) (2015). See also *id.* § 1502.13 (the purpose and need statement in an EIS "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed actions.").

<sup>37</sup> See *City of Grapevine v. U.S. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

<sup>38</sup> <http://www.mass.gov/ago/docs/energy-utilities/reros-study-final.pdf> (Massachusetts AG Study).

38. The EA's adoption of Tennessee's stated purpose and need for the project is consistent with NEPA's requirements, and Tennessee can only accommodate the requests for additional firm natural gas transportation service by expanding its existing infrastructure.<sup>39</sup> In addition, the cited Massachusetts AG Study does not support the commentors' argument. The purpose of the study was to analyze whether the New England region has sufficient natural gas pipeline capacity to meet the region's identified electric system reliability needs.<sup>40</sup> The study explicitly states that it does not assess "whether there is a need for incremental pipeline capacity to meet gas LDC needs or whether power system needs (or lack thereof) should affect considerations related to development and construction of new pipeline capacity for use by gas LDCs."<sup>41</sup> As stated earlier, the purpose of the project is to provide new firm transportation service to three LDCs. Moreover, the central assumption underlying the Massachusetts AG Study's analysis of existing natural gas capacity includes the operation of the Connecticut Expansion Project.<sup>42</sup> In other words, the Massachusetts AG Study assumes the project will be built.

39. As for EPA's Clean Power Plan, we note that it is not intended to address the gas needs of LDCs. Moreover, contrary to STOP's assertion, the recently stayed-Clean Power Plan has not been implemented<sup>43</sup> and does not immediately reduce the need for natural gas infrastructure in the northeast region. In fact, the EPA specifically considered that the substitution of coal-fired electric generating units with natural gas-fired generating units in determining the best system of emissions reduction for carbon dioxide

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<sup>39</sup> See EA at 1-2.

<sup>40</sup> See Massachusetts AG Study at 20, n.36.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 8 (in its Power Supply Deficiency Analysis section, the study states that "we include an additional 0.414 [billion cubic feet per] day of new capacity in the third quarter of 2016 for the Spectra Algonquin Incremental Market (AIM) Project and the Kinder Morgan Connecticut Expansion Project.").

<sup>43</sup> *Chamber of Commerce v. EPA*, --- S.Ct. ----, 2016 WL 502658 (Mem) (staying the Clean Power Plan until after the U.S. Court of Appeals for the D.C. Circuit and the U.S. Supreme Court decide the matter).

from the power sector.<sup>44</sup> Thus, we conclude the need of the project is appropriately defined and adequately discussed.

### 3. EA vs. EIS

40. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.<sup>45</sup> If, however, an agency determines that a federal action is not likely to have significant adverse effects, it may prepare an EA for compliance with NEPA.<sup>46</sup> In addition, CEQ regulations state that one of the purposes of an EA is to determine whether an EIS is required.<sup>47</sup> Thus, based on the Commission's experience with NEPA implementation for pipeline projects, the Commission's environmental staff determines upfront whether to prepare an EIS or an EA for each new proposed project, pursuant to the Commission's regulations.<sup>48</sup>

41. While CEQ regulations do not define "significant," they do explain that whether an impact is "significant" depends on both "context" and "intensity."<sup>49</sup> Context means that the "significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality."<sup>50</sup> Intensity is determined by considering the unique characteristics of the geographic area, the degree to which the effects are highly controversial or highly uncertain or unknown, the degree to which the

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<sup>44</sup> See EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662, 64,667 (Oct. 23, 2015) (the transition from coal to natural gas is referred to as Building Block 2).

<sup>45</sup> See 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. § 1502.4 (2015).

<sup>46</sup> See 40 C.F.R. §§ 1501.3-1501.4 (2015). An EA is meant to be a "concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact." *Id.* § 1508.9(a). Pursuant to the Commission's regulations, if an EA is prepared first, "[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared." 18 C.F.R. § 380.6(b) (2015).

<sup>47</sup> 40 C.F.R. § 1501.4(c) (2015).

<sup>48</sup> See 18 C.F.R. § 380.6(b) (2015).

<sup>49</sup> 40 C.F.R. § 1508.27 (2015).

<sup>50</sup> *Id.* § 1508.24(a).

action may establish a precedent for future actions, whether the action is related to other actions with insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect threatened and endangered species.<sup>51</sup>

42. Several commentors, including Mass Audubon, request that the Commission prepare an EIS rather than an EA. Furthermore, Ms. Atwater-Williams contends that state and federal permitting agencies' review process changed the project scope after the EA was issued to such an extent that an EIS is now required.

43. Here, Commission staff determined that an EA was appropriate because the project would only involve looping and associated facilities, and modifications to an existing compressor station.<sup>52</sup> Other than temporary construction impacts, the only environmental impacts expected to result from the project would be conversion of forested areas to maintained right-of-way or aboveground facilities, as well as conversion of forested wetlands to scrub-shrub wetlands. However, these permanent impacts would not be significant.

44. Since the issuance of the EA, Tennessee has proposed to reduce its construction right-of-way, reduce the size of a workspace, and eliminate the use of three pipeyards.<sup>53</sup> These minor reductions in the project scope do not warrant a change in the conclusions of the EA or necessitate preparation of an EIS. We recognize that ongoing state and federal reviews may refine mitigation plans or result in adjustments to address site-specific circumstances. Accordingly, this order contains numerous pre-construction conditions that will enable the Commission to ensure compliance with all statutory and regulatory requirements. Specifically, Environmental Conditions 1 and 5 require prior Commission approval for any modifications to construction procedures, mitigation measures, facility locations, or route alignments prior to the start of construction. In addition, any applicable federal and federally delegated authorizations for such modifications must be documented prior to Commission approval. We conclude that the EA adequately describes the project's potential environmental impacts and the mitigation measures to address those impacts. The conditions to this order ensure that all such measures will be fully developed and, where appropriate, approved by federal and federally delegated authorities, before any construction activities applicable to such approvals may commence. Thus, we find that the EA appropriately determined that an EIS is not necessary.

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<sup>51</sup> *Id.* § 1508.24(b).

<sup>52</sup> *See* EA at 4.

<sup>53</sup> *See* Tennessee November 23, 2015 Comment on the EA.

#### 4. Programmatic EIS

45. CEQ regulations do not require broad or “programmatic” NEPA reviews. CEQ has stated that such reviews may be appropriate when an agency is: (1) adopting official policy; (2) adopting a formal plan; (3) adopting an agency program; or (4) proceeding with multiple projects that are temporally and spatially connected.<sup>54</sup> The Supreme Court has held that a NEPA review covering an entire region (that is, a programmatic review) is required only “if there has been a report or recommendation on a proposal for major federal action” with respect to the region,<sup>55</sup> and the courts have concluded that there is no requirement for a programmatic EIS where the agency cannot identify the projects that may be sited within a region because individual permit applications will be filed at a later time.<sup>56</sup>

46. STOP suggest the Commission prepare a programmatic EIS covering this and five other projects potentially planned for the northeast region, including Tennessee’s Northeast Energy Direct Project (NED Project).<sup>57</sup> Because these projects are expected to implement the same best practice and mitigation measures, such as the Commission’s *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) and its

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<sup>54</sup> See CEQ, Memorandum on the Effective Use of Programmatic NEPA Reviews, at 13-14, (2014), [https://www.whitehouse.gov/sites/default/files/docs/effective\\_use\\_of\\_programmatic\\_nepa\\_reviews\\_18dec2014.pdf](https://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf).

<sup>55</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 399 (1976) (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

<sup>56</sup> See *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 316-17 (4th Cir. 2009).

<sup>57</sup> Tennessee filed an application for a certificate for the NED Project on November 20, 2015, in Docket No. CP16-21. The other projects mentioned are Algonquin Gas Transmission’s AIM project (*Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (2015), *reh’g denied*, 154 FERC ¶ 61,048 (2016)); Algonquin’s and Maritimes & Northeast Pipeline’s Atlantic Bridge Project (application filed November 5, 2015, in Docket No. CP16-9); Algonquin’s Access Northeast Project (which entered the pre-filing process in Docket No. PF16-1 in November 2015); and a Portland Natural Gas Transmission System Continent to Coast (C2C) Expansion Project, for which the company announced an open season in Spring 2013, but which is not currently before the Commission in any form.

*Upland Erosion Control, Revegetation and Maintenance Plan* (Plan), STOP contends a programmatic EIS is needed.

47. The Commission acts on individual applications filed by entities proposing to construct interstate natural gas pipelines. Under NGA section 7, the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities “is or will be required by the present or future public convenience and necessity.”<sup>58</sup> What is required by NEPA, and what the Commission provides, is a thorough examination of the potential impacts of specific projects. In the circumstances of the Commission’s actions, a broad, regional analysis would “be little more than a study . . . concerning estimates of potential development and attendant environmental consequences,”<sup>59</sup> which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”<sup>60</sup> As to projects that are closely related in time or geography, the Commission may, however, prepare a multi-project environmental document, where that is the most efficient way to review project proposals.<sup>61</sup>

48. We disagree with STOP’s contention that our requirement that natural gas companies comply with the Commission’s Plan and Procedures demonstrates regional planning on our part. We expect all natural gas companies, no matter the location of their project, to comply with these plans. These plans are designed to help project operators protect the environment and promote restoration.

49. The Commission is not engaging in a regional federal action. Thus, the Commission’s environmental review of Tennessee’s proposed Connecticut Expansion Project in a discrete EA is appropriate under NEPA. We conclude a programmatic EIS is not required.

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<sup>58</sup> 15 U.S.C. § 717f(e) (2012).

<sup>59</sup> *Kleppe*, 427 U.S. at 402.

<sup>60</sup> *Piedmont*, 558 F.3d at 316.

<sup>61</sup> See, e.g., *Environmental Assessment for the Monroe to Cornwell Project and the Utica Access Project*, Docket Nos. CP15-7-000 and CP15-87-000 (filed Aug. 19, 2015) and *Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects*, Project Nos. 1888-030, 2355-018, and 405-106 (filed Mar. 11, 2015).

## 5. Segmentation

50. CEQ regulations require the Commission to include “connected actions,” “cumulative actions,” and potentially, “similar actions” in its NEPA analyses.<sup>62</sup> “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”<sup>63</sup> “Connected actions” include actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.<sup>64</sup>

51. In *Del. Riverkeeper Network v. FERC*, the D.C. Circuit emphasized that an “agency’s determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a).”<sup>65</sup> Our environmental review here indeed followed CEQ regulations against segmentation. Courts have applied a “substantial independent utility” test in evaluating whether connected actions are improperly segmented. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”<sup>66</sup> For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each

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<sup>62</sup> 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

<sup>63</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. See, e.g., *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-06 (9th Cir. 2003).

<sup>64</sup> 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

<sup>65</sup> *Del. Riverkeeper*, 753 F.3d at 1315.

<sup>66</sup> *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); see also *O’Reilly v. Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability.”).

segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”<sup>67</sup>

52. In *Del. Riverkeeper Network v. FERC*, the D.C. Circuit held that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.<sup>68</sup> The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.<sup>69</sup> Subsequently, the same court has indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.<sup>70</sup> Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.<sup>71</sup>

53. Several commentators, including Mass Audubon, the Massachusetts AG, Northeast Energy Solutions, Inc. (Northeast Energy), Cathy Kristofferson, Ms. Atwater-Williams, and STOP, accuse the Commission of improperly segmenting our environmental review of the Connecticut Expansion Project from other natural gas projects in the northeast region, specifically Tennessee’s NED Project. They point to similarities between the Connecticut Expansion and the NED Projects, namely that Tennessee is the applicant for both projects, Southern Connecticut and Connecticut Natural are customers for both projects, three months separate the time when Tennessee filed an application for the Connecticut Expansion Project and when it commenced the pre-filing process for the NED Project, and Tennessee proposes to extend the proposed Connecticut Loop as part of the NED Project.<sup>72</sup>

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<sup>67</sup> *Coal. on Sensible Transp.*, 826 F.2d at 69.

<sup>68</sup> 753 F.3d at 1314 ,1316.

<sup>69</sup> *Id.*

<sup>70</sup> See *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

<sup>71</sup> See *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

<sup>72</sup> STOP November 23, 2015 Comment on the EA at 16.

54. Tennessee's proposed Connecticut Expansion and NED Projects are not physically, functionally, or financially connected. The \$5.2 billion NED Project encompasses a much larger footprint than the Connecticut Expansion Project, with one component of the NED Project consisting of about 246 miles of pipeline and another component consisting of about 174 miles of pipeline. The Connecticut Expansion Project would only encompass about 13.5 miles of pipeline in total. The Connecticut Expansion and NED Projects are also designed to serve distinct purposes. The Connecticut Expansion Project is designed to provide 72,100 Dth per day of firm transportation service from an interconnection with Iroquois Gas Transmission System, L.P. in Wright, New York, to three LDCs in Hartford County, Connecticut. In contrast, the NED Project, as currently proposed, is designed to provide 751,650 Dth per day of firm transportation from northern Pennsylvania to New York and New England for multiple shippers. Further, though two of the three LDCs which have contracted for service on the Connecticut Expansion Project have also contracted for service on the NED Project, the NED Project will also transport gas for other LDCs, as well as for natural gas producers and a power generator.<sup>73</sup> Moreover, Connecticut Expansion service can be provided to the two common shippers regardless of whether the NED Project is ever built. The two projects would also be placed into service at different times. The Connecticut Expansion Project facilities are anticipated to be placed into service on November 1, 2016. The NED Project facilities, as currently-proposed, would be placed into service two years later (i.e., November 1, 2018). Tennessee can operate the Connecticut Expansion Project and provide service to the project's three shippers even if the NED Project is not built. While the two projects would physically overlap at the Connecticut Loop, this fact does not demonstrate that the projects are interdependent. Connectivity by itself does not equate to interdependence. If this were the case, no project in the interstate pipeline grid could be independently proposed, evaluated, or constructed.

55. In addition, the projects are not financially connected. The Connecticut Expansion Project is fully subscribed and is not dependent on the NED Project for financial viability.

56. Furthermore, connected actions must be proposed concurrently.<sup>74</sup> Although Tennessee entered into the Commission's pre-filing process for the NED Project in October 2014, it did not file its certificate application until November 20, 2015. Therefore, when the Commission was conducting its environmental review of the

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<sup>73</sup> See Tennessee November 20, 2015 Application for the NED Project at 5 and 21.

<sup>74</sup> *Minisink*, 762 F.3d at 113 n.11; *Del. Riverkeeper*, 753 F.3d at 1317-18 (citing *Weinberger v. Catholic Action of Haw.*, 454 U.S. 139, 146 (1981)).

Connecticut Expansion Project, which was issued on October 23, 2015, the NED Project was not a proposed action.<sup>75</sup>

57. For the reasons discussed, we find the Connecticut Expansion Project is not connected to the proposed NED Project.<sup>76</sup>

## **6. Unconventional Production and Energy Policy**

58. Arnold Piacentini requests that the Commission deny Tennessee's proposals because of concerns with hydraulic fracturing and national energy policy. These concerns represent issues that lie beyond the Commission's jurisdictional reach. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, are localized. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act. The EPA also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells. Any impacts associated with hydraulic fracturing are neither caused by the proposed project nor reasonably foreseeable consequences of our approval of the proposed project.

59. Mr. Piacentini also expressed concern that climate change will be exacerbated because of fugitive emissions from the proposed project. The EA concluded that fugitive emissions from project operations will be temporary and not significant.<sup>77</sup> In addition, Tennessee is expected to comply with federal requirements under 40 C.F.R. Part 98, Subpart W, for reporting actual greenhouse gas emissions in excess of 25,000 metric tons per year in any year. Tennessee would be subject to this reporting requirement for emissions related to the associated compressor stations and meter stations including, but not limited to, compressor venting, blowdown vent stacks, and leaks from valves, meters, and connectors. Based on previous projects of similar scope and even larger projects, we

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<sup>75</sup> A project is still subject to significant changes during the pre-filing stage in response to input from landowners, other stakeholders, and Commission staff. Thus, the Commission cannot conduct a meaningful assessment of a project's impacts until an application has been filed.

<sup>76</sup> Discussion of cumulative actions is included in the cumulative impacts discussion of this order and in section B.10 of the EA.

<sup>77</sup> See EA at 94 and 119.

anticipate that the fugitive emissions from the pipeline loops would be far below the reference point provided by CEQ for determining a quantitative analysis of greenhouse gas emissions from a particular project.<sup>78</sup> Given the information provided in the EA and Tennessee's application, we find possible fugitive emissions from the project will not significantly impact global climate change.

## 7. Cumulative Impacts

60. CEQ defines "cumulative impact" as "the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions."<sup>79</sup> The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

61. The "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."<sup>80</sup> CEQ has explained 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."<sup>81</sup> Further, a cumulative impact analysis need only include "such information as appears to be reasonably necessary under the circumstances 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."<sup>82</sup> An agency's analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no

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<sup>78</sup> See CEQ, REVISED DRAFT GUIDANCE FOR FEDERAL DEPARTMENTS AND AGENCIES ON CONSIDERATION OF GREENHOUSE GAS EMISSIONS AND THE EFFECTS OF CLIMATE CHANGE IN NEPA REVIEWS, 79 Fed. Reg. 77,802, at 77,829 (Dec. 24, 2014).

<sup>79</sup> 40 C.F.R. § 1508.7 (2015).

<sup>80</sup> *Kleppe*, 427 U.S. at 413.

<sup>81</sup> CEQ, CONSIDERING CUMULATIVE EFFECTS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, at 8 (Jan. 1997), [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf) (1997 Guidance on Cumulative Effects).

<sup>82</sup> *New York v. Kleppe*, 429 U.S. 1307, 1311 (1976) (quoting *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d Cir. 1975)).

significant direct and indirect impacts usually require only a limited cumulative impacts analysis.<sup>83</sup>

62. Consistent with CEQ's Guidance on Cumulative Effects, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a "region of influence" in which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.<sup>84</sup> While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.<sup>85</sup>

63. The Massachusetts AG and Mass Audubon contend that the Connecticut Expansion Project should be considered in conjunction with all other pipeline projects in the northeastern United States to address cumulative impacts. Northeast Energy asserts that the projects presented as past, present, and reasonably foreseeable future actions are incomplete.

64. In this case, Commission staff followed CEQ guidance by: (1) identifying the significant cumulative effects issues associated with the proposed action;<sup>86</sup> (2) establishing the geographic scope for analysis;<sup>87</sup> (3) establishing a time frame for analysis equal to the timespan of the proposed project's direct and indirect impacts,<sup>88</sup> and; (4) identifying other actions that potentially affect the same resources, ecosystems, and

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<sup>83</sup> See CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2-3 (June 24, 2005), [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf).

<sup>84</sup> See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

<sup>85</sup> *Id.* P 120.

<sup>86</sup> 1997 Guidance on Cumulative Effects at 11.

<sup>87</sup> *Id.* We note that CEQ's 1997 Guidance on Cumulative Effects at 15 states that the "applicable geographic scope needs to be defined case-by-case."

<sup>88</sup> *Id.*

human communities affected by the proposed action.<sup>89</sup> With respect to the geographic scope for analysis, given the small scale of the proposed project, the lack of significant direct and indirect impacts on resources, and the expectation that impacts would be minor, temporary, and local, Commission staff adopted the watershed boundary Hydrologic Unit Code 8 for disturbances to vegetation, fisheries, and wildlife; a 0.25-mile radius from the proposed project for ground-disturbing activities; a 10-mile radius for land use and visual resources; and a 0.5 mile radius for air quality and noise. The time frame employed was the proposed project's construction schedule.<sup>90</sup> These are parameters the Commission has previously relied upon in conducting cumulative impacts reviews. As part of this review, the EA considered 12 oil and gas projects, 20 utility and electric projects, 56 transportation projects, 4 alternative energy projects (i.e. hydropower, wind, and solar), 4 commercial projects, 11 residential projects, and 15 other projects (such as a wetland restoration project, timber harvest, and hospital renovation) in the northeast region.<sup>91</sup> As one of the 12 oil and gas projects, the EA considered Tennessee's proposed NED Project in the cumulative effects discussion.

65. We believe the EA considered the appropriate projects in the region of influence and concur with the EA's conclusion that the cumulative impacts of the construction and operation of the proposed project will not significantly affect the quality of the human environment.

## 8. Alternatives

66. CEQ regulations require an EA to include a brief discussion of the need for the proposal, alternatives to the proposal, and the environmental impacts of the alternatives.<sup>92</sup> Consideration of alternatives in an EA need not be as rigorous as the consideration of alternatives in an EIS.<sup>93</sup>

67. STOP comments that its alternatives to the project, such as fixing leaks to ensure efficiency or increasing compression at Compressor Station 261, were ignored or not adequately addressed in the EA. The EA considered the alternative to increase

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<sup>89</sup> *Id.*

<sup>90</sup> *See* EA at 15.

<sup>91</sup> *See* EA at 110 and Appendix J.

<sup>92</sup> 40 C.F.R. § 1508.9(b) (2015).

<sup>93</sup> *See Myersville Citizens*, 783 F.3d at 1323.

compression at Compressor Station 261 by 3,500 horsepower and determined that it would result in more air emissions, degrade reliability on Tennessee's system in Massachusetts, and lower upstream pressure west of the station.<sup>94</sup> We agree that increasing compression at Compressor Station 261 is not a reasonable alternative. Additionally, the alternative of fixing methane leaks to ensure efficiency cannot provide the 72,100 Dth per day of firm natural gas transportation service needed by the three new shippers. Consequently, fixing methane leaks is not an alternative that required evaluation in the EA.

68. Several commentors, including Mass Audubon comments that the EA's alternatives analysis should consider alternative energy sources and system efficiencies. Because the purpose of the project is to provide 72,100 Dth per day of firm natural gas transportation service to three new shippers, the use of renewable energy sources or the gains realized from increased energy efficiency and conservation are not transportation alternatives because they cannot function as a substitute for the project. Thus, they were not considered or evaluated further in the EA.

69. The Massachusetts Energy Facilities Siting Board (Siting Board) comments that the landowner near milepost (MP) 3.8 of the Massachusetts Loop has requested that Tennessee relocate the pig receiver facility on either the far east side of his property or the west side of his property, near Beech Plain Road, to avoid bisecting his property. As shown in Tennessee's revised alignment sheets submitted on April 17, 2015, the pig receiver facility near MP 3.8 of the Massachusetts Loop is located on the far east side of the property, as the landowner requested. We thus consider this concern resolved.

70. The Berkshire Regional Planning Commission (BRPC) requests that the Commission consider alternatives, such as alternative routes within existing or proposed rights-of-way in Connecticut, replacement of existing lines with larger and more efficient lines, and utilization of systems and infrastructure currently proposed in other projects (i.e., the NED Project) to meet demand. The EA considers alternatives to the pipeline system, as well as alternatives and variations to the route. No feasible system alternative to the project was identified. However, one minor route variation for the Connecticut Loop was analyzed at a landowner's request and the variation was adopted by Tennessee and incorporated into the pipeline route as evaluated in the EA. Further, approximately 92 percent of the Connecticut Loop is located within existing rights-of-way. We find that further analysis of route alternatives to utilize existing or proposed rights-of-way is not warranted.

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<sup>94</sup> See EA at 122.

## 9. Construction Procedures and Monitoring

71. The Siting Board requests that Tennessee develop a Winter Construction Plan. As discussed in section B.1.2 and section D of the EA, and as required by Environmental Condition 13, we will require Tennessee to provide a Winter Construction Plan for review and written approval by the Commission prior to beginning construction.

72. Susan Baxter requests clarification regarding the width of the permanent right-of-way for the Massachusetts Loop, specifically relating to the EA's requirement that Tennessee maintain a 10-foot wide strip to allow for more frequent vegetation maintenance to survey corrosion and leaks.<sup>95</sup> As stated in the EA, the new permanent right-of-way for the Massachusetts Loop will be 25 feet wide, which is adjacent to the permanent right-of-way for Tennessee's existing 200 and 300 Lines.<sup>96</sup> The 10-foot-wide strip identified in the EA relates only to the Massachusetts Loop. Tennessee is expected to comply with this mitigation measure as required in this order and discussed in section A.5.1 of the EA. Any maintenance conducted by Tennessee on its existing 200 and 300 Lines that are located in the right-of-way with the Connecticut Expansion Project is bound by the Commission's orders for those specific facilities.

73. BRPC requests that Tennessee participate in a third-party monitoring program during construction and that Tennessee provide the required bi-weekly status reports to the Sandisfield Conservation Committee and the Sandisfield Select Board. Given our requirements in Environmental Condition 7 that Tennessee employ at least one environmental inspector per spread, and considering the limited number of spreads, we conclude that a third-party monitoring program is not necessary. In accordance with the Commission's Plan, and as required by Environmental Condition 8, we require Tennessee to file bi-weekly construction reports detailing issues observed by its environmental inspectors. In addition, Commission staff will conduct independent inspections of the project throughout construction and restoration. Both Tennessee's bi-weekly reports and the Commission's independent inspection reports will be filed in Docket No. CP14-529-000 and available for public review.

74. The Massachusetts Department of Conservation and Recreation (Massachusetts DCR) requests that Tennessee apply best design and management practices, including providing Massachusetts DCR with a detailed description of the project area, construction reports submitted by an environmental monitor, and a comparative analysis of the area

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<sup>95</sup> *See id.* at 26.

<sup>96</sup> *See id.* at 10.

before and after construction. Ms. Kristofferson comments that Massachusetts Forestry Best Management Practices require that tree cutting be done when the ground is dry or frozen. We will require Tennessee to implement the best management practices described in the Commission's Plan and Procedures and, as required by Environmental Condition 8, we will also require Tennessee to file bi-weekly construction reports. In addition, Commission staff will conduct independent inspections of the project throughout construction and restoration. As noted above, Tennessee's bi-weekly reports and the Commission's independent inspection reports will be filed in Docket No. CP14-529-000 and available for public review. As appropriate, Massachusetts DCR may require Tennessee to implement additional measures under its permitting authority.

## 10. Blasting

75. The Siting Board requests that Tennessee provide additional protection to architectural resources during blasting activities by expanding the area in which Tennessee would conduct pre- and post-blast inspections from 200 to 500 feet. As discussed in section B.7.3 and table B-13 in the EA, the Massachusetts Historical Commission has concurred with the conclusions in the EA that blasting would not have adverse effects on architectural resources due to their distances from project workspaces. As an additional protection measure, and as required by Environmental Condition 26, Tennessee must further assess potential impacts on the Josiah Hulet House<sup>97</sup> due to vibratory effects from heavy equipment traffic and file avoidance and mitigation measures for approval. We conclude historical resources will be adequately protected.

76. BRPC contends that the Commission should require that Tennessee monitor wells within a minimum of 200 feet of a construction work area and within a minimum of 250 feet of trench blasting. We clarify that Tennessee's Blasting Plan includes monitoring public and private wells within 200 feet of blasting, which is beyond the required distance as set forth in our regulations.<sup>98</sup> We will modify Environmental Condition 14 in the EA to reflect the 200 foot distance. Environmental Condition 14 also requires pre- and post-construction monitoring of private wells within 200 feet of

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<sup>97</sup> The Josiah Hulet House, located at 182 Cold Spring Road, Sandisfield, Massachusetts, is about 300 feet from the Massachusetts Loop's right-of-way. It is owned by Ronald M. Bernard and Ms. Atwater-Williams and is eligible for listing in the National Register of Historic Places. *See id.* at 86.

<sup>98</sup> *See* 18 C.F.R. § 380.12(d)(9) (2015) (requiring applicants to identify known public and private groundwater supply wells and springs within 150 feet of the proposed construction areas).

construction work areas, with the well owners' permission. In addition, we will require Tennessee to file a report with the Secretary of the Commission within 30 days of placing the facilities in-service that discusses well yield and water quality complaints for identified wells and how complaints were resolved. In addition, as stated in the EA, all blasting must be done in accordance with Massachusetts as well as other local and federal blasting regulations.<sup>99</sup> We conclude public and private groundwater supply wells and springs would be adequately protected. Therefore, we concur with the EA's conclusion that these measures are appropriate to assess construction impacts and ensure that any impacts on groundwater resources will be properly mitigated.

77. Massachusetts DCR also is concerned that blasting in the Otis State Forest would adversely affect wetland resources. Commission staff has reviewed Tennessee's Blasting Plan, and we agree that it adequately protects environmental resources.

78. Further, BRPC requests that copies of the site-specific blasting plans developed by Tennessee's contractor be provided to local officials, a public notification be made, and Tennessee be held responsible for ensuring emergency response personnel are on-site during blasting activities. Tennessee will prepare site-specific blasting plans for each area where blasting will be necessary in accordance with federal, state, and local requirements. Tennessee will provide site-specific blasting plans and notifications to the necessary state and local agencies, as well as notify nearby landowners. Commission staff has reviewed Tennessee's Blasting Plan, and we agree that it is adequately protects public safety.

79. Massachusetts DCR identifies a potential contradiction in the EA, which states that the soil depth in the Massachusetts Loop is 10 to 50 feet deep but later states that 2.3 miles of the Massachusetts Loop will cross areas with shallow bedrock. We clarify here that the EA identifies soil as 10 to 50 feet deep in describing the predominant surficial geology of the general project area in Massachusetts. However, more specific study of the project alignment, including review of soil survey maps and consultations with the Massachusetts State Geologist, resulted in identification of 2.3 miles with shallow bedrock, as reported in the EA.

## **11. Land Use**

80. BRPC, Ms. Kristofferson, Kenneth and Katja Mayer (Mayers), the Siting Board, Mass Audubon, and numerous other commentors request avoidance of lands protected under Article 97 of the Massachusetts State Constitution,<sup>100</sup> namely land in the Otis State

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<sup>99</sup> See EA at 24.

<sup>100</sup> MASS. CONST. art. XLIX.

Forest.<sup>101</sup> Massachusetts DCR requests that we require Tennessee to comply with state land disposition policy.

81. Article 97 is a state public trust doctrine which mandates that a change in use or a disposal of lands held for public purposes must be approved by a two-thirds vote of both houses of the Massachusetts legislature.

82. As stated in the EA, Tennessee has complied with the state process and submitted the required information to the appropriate state agencies, pursuant to the Massachusetts Environmental Protection Act<sup>102</sup> and its implementing regulations.<sup>103</sup> Moreover, on July 13, 2015, a bill was introduced to grant an easement for a 2-mile corridor in the Otis State Forest for the project.<sup>104</sup> A vote on the bill has not been scheduled.

83. Tennessee requires access to the Otis State Forest in order to tie the Massachusetts Loop into Tennessee's existing 200 Line.<sup>105</sup> The project would affect about 29 acres of the forest, of which 6 acres would be affected by operations.<sup>106</sup> The EA evaluated three alternatives that would minimize impacts on the Otis State Forest but determined the alternatives would have a greater environmental impact than the proposed route through the forest.<sup>107</sup> Based on the analysis of alternatives and the proposed route, we agree with the EA's conclusion that impacts to the Otis State Forest will be minor.<sup>108</sup>

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<sup>101</sup> The Otis State Forest covers over 3,800 acres and is controlled and managed by Massachusetts DCR. *See* EA at 76.

<sup>102</sup> MASS. GEN. LAWS ch. 30 §§ 61-62I (West 2015).

<sup>103</sup> 301 MASS. CODE REGS. 11.00 (2015).

<sup>104</sup> H.3690, 189th Leg. (Mass. 2015).

<sup>105</sup> *See* EA at 8.

<sup>106</sup> *See id.* at 76.

<sup>107</sup> *See id.* at 123-27. The Massachusetts Executive Office of Environmental Affairs' certificate on its Final Environmental Impact Report also reached the same conclusion. *See* Tennessee April 22, 2015 Filing (enclosing the Certificate of the Secretary of Energy and Environmental Affairs on the Final Environmental Impact Report at 7).

<sup>108</sup> *See* EA at 123-27.

84. The Siting Board requests clarification on the land disposition process in the event the bill fails to pass. STOP maintains that the certificated project would violate the state constitution if Tennessee were to exercise eminent domain under the NGA to acquire property rights in the Otis State Forest. The Massachusetts AG requests we include as a condition in the order that Tennessee must comply with Article 97's policy of no net loss of conservation lands. Both the Massachusetts AG and Massachusetts DCR request that we require Tennessee to comply with the mitigation measures and compensation requirements identified in the Massachusetts Final Environment Impact Report certificate and section 61 certificate.<sup>109</sup>

85. The Commission encourages applicants to cooperate with state and local agencies regarding the location of pipeline facilities, environmental mitigation measures, and construction procedures. That a state or local authority requires something more or different than the Commission does not necessarily make it unreasonable for an applicant to comply with both the Commission's and state or local agency's requirements. It is true that additional state and local procedures or requirements could impose more costs on an applicant or cause some delays in constructing a pipeline. Not all additional costs or delays, however, are unreasonable in light of the Commission's goal to include state and local authorities to the extent possible in the planning and construction activities of pipeline applicants. The Commission's practice of encouraging cooperation between interstate pipelines and local authorities does not mean, however, that those agencies may use their regulatory requirements to undermine the force and effect of a certificate issued by the Commission.<sup>110</sup> A rule of reason must govern both the state and local authorities' exercise of their power and an applicant's bona fide attempts to comply with state and local requirements.

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<sup>109</sup> Massachusetts law requires agencies to review, evaluate, and determine the environmental impacts of their works, projects, or activities. The agency's determination must include a finding describing any environmental impacts of the project and a finding that all feasible measures have been taken to avoid or minimize such impact. *See* MASS. GEN. LAWS ch. 30 §§ 61 (West 2015). The findings by an agency are produced in a section 61 certificate. *See* 301 MASS. CODE REGS. 11.12(5) (2015).

<sup>110</sup> *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulations is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

86. We note that the Commission cannot act as a referee between applicants and state and local authorities regarding each and every procedure or condition imposed by such agencies. In the event compliance with a state or local condition conflicts with a Commission certificate, parties are free to bring the matter before a Federal court for resolution.

87. Ms. Baxter comments that the EA misidentifies the crossing methods at Hammertown Road and Beech Plain Road on the Massachusetts Loop as conventional bore crossings rather than open cut, based on justifications for additional temporary workspace identified at these locations. We disagree. The EA correctly describes the crossing method as conventional bore for Beech Plain Road<sup>111</sup> and Tennessee's application identifies Hammertown Road as an open-cut crossing.

88. Ms. Baxter also comments that permanent and construction impacts on the Otis State Forest are underestimated. We disagree. The permanent right-of-way width within the Otis State Forest varies between 15 feet and 35 feet wide; thus, total impacts within the permanent right-of-way are about 6 acres, as stated in section B.5.3 of the EA. Tennessee, in collaboration with Massachusetts DCR developed a compensation plan for temporary and permanent impacts on the Otis State Forest. While vegetation will need to be cleared within the construction right-of-way, Tennessee would locate the proposed pipeline loop within or adjacent to the existing cleared rights-of-way to the extent practicable to minimize impacts on the state forest. After construction, temporary workspaces will be restored in accordance with Massachusetts DCR's compensation plan.

89. STOP alleges that the EA fails to adequately discuss the uniqueness of the affected state forest and parklands protected under Article 97 of the Massachusetts Constitution. Section 1508.27 of CEQ's regulations requires consideration of both context and intensity in order to determine significance of a proposal.<sup>112</sup> Section 1508.27(b) recommends that the unique characteristics of the geographic area should be considered in evaluating intensity of an impact.<sup>113</sup> The EA complies with CEQ's regulations. STOP fails to consider the EA as a whole document. The entire EA analyzes individual aspects of the Massachusetts Loop, which affects Article 97-protected land including geology, soils, water resources, wetlands, vegetation, wildlife, fisheries, land use, recreation, and

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<sup>111</sup> See Appendix B of the EA.

<sup>112</sup> 40 C.F.R. § 1508.27 (2015).

<sup>113</sup> *Id.* § 1508.27(b).

visual resources. Based on the analysis of those resources, the EA concludes that the impact would not be significant.

90. Massachusetts DCR notes that only the Tyringham pipeyard is identified in the map in Appendix A of the EA (Topographic Maps of the Pipeline Route and Project Facilities), but Table A-5 of the EA identifies four pipeyards. Massachusetts DCR requests clarification on the location of the other pipeyard sites and whether Tennessee proposes to site a pipeyard at Cold Spring Road, which is on Massachusetts DCR property. In its response to the EA dated November 23, 2015, Tennessee committed to a single pipeyard (i.e., South Beech Plain Road pipeyard). The Cold Spring Road pipeyard is no longer proposed for the project.

91. Environmental Condition 25 of the EA recommends that Tennessee develop a visual screening plan in coordination with the landowner at MP 4.1 on the New York Loop. Tennessee filed comments on the EA, stating that it has coordinated with this landowner, regarding potential visual impacts from relocation of a pig receiver site. Tennessee indicates that the landowner is not requesting visual screening of the site and that some screening already exists. Since visual impacts on the landowner would be minimal, we will not adopt environmental recommendation 25 in the EA as a condition of this order.

## **12. Water Resources**

92. BRPC comments that the EA inconsistently states the requirements for pre- and post-construction testing of water wells. Ms. Esteves comments that Tennessee has not committed to testing water wells in the project area. Tennessee has committed to offering pre- and post-construction well testing to owners with water wells within 200 feet of the project workspace or blasting areas, as detailed in Resource Report 2 of its application on July 31, 2014. Thus, Environmental Condition 14 has been revised to indicate that Tennessee will conduct testing at water wells within 200 feet (rather than 150 feet recommended in the EA) of the construction workspace or blasting areas. Seeps or springs within 150 feet of project workspaces will be reviewed by a qualified professional to determine if any impacts may occur, at the request of the landowner.

93. Ms. Esteves also comments that the project would have adverse effects on drinking water supplies for the Town of Sandisfield because of damage to wetlands, blasting, installation of underground pipe, and hydrostatic testing. As discussed in sections B.2.1 and B.2.2, Tennessee will avoid or minimize impacts on groundwater and surface water resources through adoption of our recommendations and implementation of its Spill Prevention and Response Plan, Blasting Plan, and the Commission's Procedures during construction and operation. Thus, we concur with the conclusion in the EA that impacts on water resources would not be significant with implementation of the plans and the conditions in this order.

94. Ms. Baxter comments that Spectacle Pond Brook is a coldwater fishery and not a warmwater fishery as identified in section B.3.2 of the EA. Fishery classifications were obtained from state geospatial data and published reports, which classify Spectacle Pond Brook as a warmwater fishery.<sup>114</sup> The Massachusetts Department of Fisheries and Wildlife confirmed this classification in a letter to Tennessee dated May 28, 2014.

95. Alice Boyd, a member of the Sandisfield Board of Selectmen, comments that Tennessee has not consulted the Town of Sandisfield regarding the use of Lower Spectacle Pond as a source of water for hydrostatic testing and that the town and the Sandisfield Board of Selectmen are opposed to the use of Lower Spectacle Pond for this activity. In addition, BRPC requests that Tennessee consult with the Massachusetts Department of Environmental Protection and the Town of Sandisfield regarding hydrostatic test water discharge. BRPC also requests assurance that any discharged water from the testing would be free of any residual materials or potential contaminants. Ms. Kristofferson requests that Tennessee use an alternate water source for hydrostatic test water withdrawal, rather than using Lower Spectacle Pond. Ms. Esteves comments that hydrostatic test water withdrawal from Spectacle Pond would adversely affect the pond.

96. As explained the EA, Tennessee will comply with Massachusetts' Water Resources Management Program<sup>115</sup> and section 404 of the Clean Water Act<sup>116</sup> and consult with the Massachusetts Department of Environmental Protection regarding use of Lower Spectacle Pond.<sup>117</sup> Tennessee will coordinate with local officials on the timing of the water withdrawal in order to notify residents of any temporary restrictions on the use of the pond. The EA found that water withdrawal would reduce the 70-acre pond by about 0.5 inches in depth. After completion of hydrostatic testing, Tennessee would discharge the water through an energy dissipation structure into a vegetated upland area for infiltration and to prevent erosion, in accordance with the Commission's Procedures and with federal and state discharge permits. Tennessee would also screen its hydrostatic water intakes to prevent entrainment of aquatic species. Given the negligible reduction in water depth and because Tennessee would obtain and comply with required water

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<sup>114</sup> See EA at 61.

<sup>115</sup> 310 MASS. CODE REGS. 36.00 (2015).

<sup>116</sup> 33 U.S.C. § 1344 (2012).

<sup>117</sup> See EA at 48-49.

withdrawal and discharge permits, we concur with the EA that the withdrawal will not have a significant adverse effect to Lower Spectacle Pond or its uses.

97. Massachusetts DCR recommends that Tennessee design site-specific stream and riparian restoration plans for all stream crossings on Massachusetts DCR lands; that the plans should include bioengineering, seeding, and plantings of native vegetation on banks and riparian areas; and that the plans should be submitted to it for approval. Massachusetts DCR requests that all natural features in stream channels and banks be restored. Massachusetts DCR states that it will require mitigation at the SMA-14<sup>118</sup> stream crossing to include a small recreational crossing in the existing right-of-way. Lastly, Massachusetts DCR states that the Commission should require an independent environmental scientist that reports to the Massachusetts DCR to monitor all construction and restoration on Massachusetts DCR lands.

98. Tennessee has committed to implementing the Commission's Procedures, which includes restoration measures for streams and riparian areas. These measures specifically include restoration of waterbody banks to preconstruction contours or to a stable angle of repose (as approved by the project's environmental inspector), as well as restoration of disturbed riparian areas with native species similar in density to adjacent undisturbed lands. We find that the restoration measures described in our Procedures are adequate for the project. Massachusetts DCR, however, as appropriate may require additional measures, if such measures are within its permitting authority.

99. Several commenters also contend that a Clean Water Act Section 401 certificate is required prior to tree clearing related to the project. Section 401 provides that no federal license or permit shall be granted until the state certifies that any activity which may result in a discharge into the navigable waters will comply with the applicable provisions of the Act.<sup>119</sup> The Commission's conditional approval of the project does not conflict with this language. The order is an "incipient authorization without current force or effect" because it does not allow the pipeline to begin the proposed activity before the environmental conditions are satisfied.<sup>120</sup> Although Tennessee, as a certificate holder

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<sup>118</sup> SMA-14 is a waterbody identification number for Spectacle Brook Pond, which will be crossed by the Massachusetts Loop at approximate milepost 1.9.

<sup>119</sup> 33 U.S.C. § 1341(a)(1) (2012).

<sup>120</sup> *Finavera Renewables Ocean Energy, Ltd.*, 122 FERC ¶ 61,248, at P 15 (2008); *Crown Landing LLC*, 117 FERC ¶ 61,209, at P 21 (2006); *see also Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (holding that an agency can make "even a final decision" – e.g., granting a certificate before an environmental hearing was

under section 7(h) of the NGA,<sup>121</sup> can commence eminent domain proceedings in a court action if it cannot acquire the property rights by contract, Tennessee will not be allowed to construct any facilities on subject property unless and until there is a favorable outcome on all outstanding requests for necessary federal approvals, including a section 401 water quality certificate. Consistent with the language of section 401 of the Clean Water Act, Environmental Conditions 9, 17, and 18 ensure that until the Massachusetts Department of Environmental Protection issues any necessary water quality certificate, Tennessee may not begin an activity, i.e., pipeline construction, which may result in a discharge into jurisdictional waterbodies. Consequently, there can be no adverse impact on Massachusetts' jurisdictional waters until the Commission receives confirmation that the Massachusetts Department of Environmental Protection has completed its review of the project under the Clean Water Act and issues the requisite permits.

### 13. Wetlands

100. Section B.2.3 of the EA recommends revisions to 14 of Tennessee's proposed 30 additional temporary workspaces within 50 feet of wetlands. The recommendations require Tennessee to file revised alignment sheets depicting the modifications or file justifications for why the revisions cannot be implemented. In response, Tennessee states that it intends to implement six of the EA's recommendations, but that it cannot implement six other recommendations and that two recommendations are not applicable.<sup>122</sup> After a review of Tennessee's justifications and the associated alignment sheets, we concur with Tennessee's evaluations and have been revised Environmental Conditions 15 and 16 as included in this order.

101. The Corps, New England District notes an inconsistency in the EA's representation of the total impacted area wetland (60.5 or 61.5 acres).<sup>123</sup> We clarify that total wetland impacts from the project are 60.5 acres.

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finished – as long as the agency assesses the environmental data before the certificate's effective date).

<sup>121</sup> 15 U.S.C. § 717f(h) (2012).

<sup>122</sup> See Tennessee November 23, 2015 Comment on the EA at 2-3.

<sup>123</sup> The Corps states that it will seek additional information from Tennessee to demonstrate proper avoidance and minimization measures outlined in the Clean Water Act section 404(b)(1) guidelines.

102. STOP maintains that it is premature for the EA to conclude that the project would not adversely affect wetlands when Tennessee has not received its section 401 certification and section 404 permit. STOP accuses the Commission of deferring environmental review of the project's impacts on wetlands to certifying agencies. BRPC makes a similar comment, stating that without a wetland and biological survey, it is premature to find that the project would have only minor and temporary impacts. Several commenters also contend that a section 404 permit is required prior to issuing a certificate.

103. STOP mischaracterizes the EA's conclusion. After a lengthy discussion about the project's effects on wetlands,<sup>124</sup> the EA concludes that the project would have minor and temporary impacts on non-forested wetlands and that vernal pools and forested wetlands would experience long-term, non-significant impacts.<sup>125</sup> To mitigate the impacts, the EA recommends 19 environmental conditions. In addition to these measures, the EA also instructs Tennessee that it would not be permitted to commence construction until it has received all necessary and applicable federal authorizations, including a section 401 certification and a section 404 permit.<sup>126</sup> The order incorporates these conditions and instructions. Nowhere in the EA does the Commission defer its responsibilities under NEPA to another agency.<sup>127</sup>

104. We also disagree with several commenters' assertion that section 404 of the Clean Water Act requires that a dredge and fill permit be issued prior to the issuance of a certificate. Section 404 of the Clean Water Act requires a permit before dredged or fill may be discharged into waters of the United States, including wetlands. Issuance of a

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<sup>124</sup> See EA at 49-55.

<sup>125</sup> See *id.* at 55; see also *id.* at 112-13 (discussing cumulative impacts on wetlands).

<sup>126</sup> See *id.* at 49.

<sup>127</sup> STOP cites *Idaho v. I.C.C.*, 35 F.3d 585 (D.C. Cir. 1994), for support. The case, however, is inapposite. There, the Interstate Commerce Commission (ICC) delegated its responsibilities under NEPA to other agencies through conditions in its authorization. Specifically, the ICC did not investigate whether wetlands occurred in the area or analyze impacts to wetlands and waterways. Instead, it delegated these tasks to other agencies. See *id.* at 589-90. Here, by contrast, Commission staff independently investigated and assessed the environmental impacts of the project. No delegation occurred.

section 404 permit is not required by the Commission before issuance of a certificate.<sup>128</sup> As stated in Environmental Condition 9, Tennessee must obtain any necessary permits prior to receiving authorization to commence any construction activities that may result in the discharge of dredged or fill material into waters of the United States.

105. Northeast Energy comments that the recent rule issued by the EPA and the Corps clarifying the scope of the “waters of the United States” under the Clean Water Act was not considered by Tennessee. The U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay of the rule on October 9, 2015.<sup>129</sup> Thus, this rule is not currently in effect and is not discussed in the EA. In any event, Tennessee will need to obtain whatever federal permits requirements are required prior to construction.

106. The Mayers state that the project will have irreparable adverse impacts on wetlands and Ms. Kristofferson requests complete avoidance of all wetlands. Massachusetts DCR recommends that Tennessee reduce the project’s footprint in the wetlands. Massachusetts DCR also states that the EA underestimates the project’s adverse effects on vernal pools and associated wildlife habitats and upland forested habitat. In accordance with Massachusetts DCR’s allegation that the project will clear many acres of upland forest habitat and fragment the forest, Massachusetts DCR requests that Tennessee assess the project’s impacts to upland terrestrial habitats that are used by breeding amphibians found in vernal pools on public lands associated with the project and explain how these impacts will be avoided, minimized, and mitigated. Massachusetts DCR also requests that all clearing and construction in vernal pool terrestrial habitats avoid breeding and migration periods to protect amphibians. Massachusetts DCR states that it will require all vernal pools found on its land to be submitted to the Massachusetts Natural Heritage and Endangered Species Program for certification and requests that all vernal pool forms, associated data, and maps be sent to the Massachusetts DCR Ecology Program. As discussed in section B.2.3 of the EA, Tennessee will construct through wetlands in accordance with the Commission’s Procedures. In addition, Environmental Conditions 15 and 16 of this order require Tennessee to evaluate further modifications to minimize impacts on wetlands in the project area, and Environmental Condition 17 requires Tennessee to file documentation of completed consultations with the Connecticut Department of Energy and Environmental Protection, Massachusetts Department of Environmental Protection, and the Corps regarding mitigation measures it would implement to avoid and minimize potential adverse effects on vernal pools. The EA concludes that with the use of the Commission’s Procedures, environmental

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<sup>128</sup> See *S. Cal. Edison Co.*, 113 FERC ¶ 61,063 (2005).

<sup>129</sup> See *In re EPA*, 803 F.3d 804 (6th Cir. 2015).

conditions in this order and the required federal permits, the project will not have significant adverse impacts on wetland resources. We concur with this conclusion.

107. Ms. Baxter comments that wetlands are present at the pipeyards associated with the Massachusetts Loop. Since the issuance of the EA, Tennessee states it will no longer use the Tyringham, Town Hill Road, or Cold Spring Road pipeyards, but will use a single yard (i.e., South Beech Plain Road pipeyard) in the Town of Sandisfield. Tennessee conducted wetland delineation surveys at the South Beech Plain Road pipeyard and chose a layout to avoid impacts on adjacent wetlands. However, the results of the wetland delineations at this pipeyard have not yet been verified by the Town of Sandisfield third-party reviewer. Environmental Condition 18 of this order requires that Tennessee file all outstanding wetland and biological survey results prior to construction. We note that Tennessee states the South Beech Plain Road pipeyard is located in an agricultural field that will be restored to pre-construction use, except for a portion of the field that will be used for wetland mitigation and will be restored as forested wetland.

108. Ms. Baxter also comments that the relocated pig receiver on the Massachusetts Loop at MP 3.8 is located within a wetland buffer. Tennessee identified a wetland near the receiver location and, although the receiver site may be considered a Bordering Vegetated Wetland under the Massachusetts Wetland Protection Act,<sup>130</sup> the site is not located within the wetland in accordance with the Commission's Procedures.

109. Tennessee requests that we correct the statement in section 2.3 of the EA, which states that vernal pools are considered Outstanding Resource Waters in Massachusetts. We clarify that only certified vernal pools are considered Outstanding Resource Waters under the Massachusetts Wetland Protection Act.

110. The Mayers, Ms. Esteves, and Ms. Kristofferson express no confidence that mitigated or restored wetlands would survive or function like the affected natural wetlands. Tennessee has committed to implementation of the Commission's Procedures, which includes not only restoration measures that must be implemented, but also specific criteria that must be met for restoration of wetlands to be considered successful. Further, the Commission's Procedures require annual monitoring and reporting of wetland restoration efforts, as well as development and implementation of a remedial revegetation plan for any wetland that has not successfully revegetated three years after construction has ended.

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<sup>130</sup> MASS. GEN. LAWS ch. 131 § 40 (2015).

111. Mass Audubon contends that the mitigation measures identified in the EA are too generalized and thus inadequate. It recommends that site-specific measures be adopted to protect specific and unique habitat features. Additionally, Mass Audubon states that studies show that wetland mitigation fails at a high rate. BRPC also recommends that the mitigation plan include a monitoring program to determine whether the replanted native species are reestablishing. Further, BRPC requests an explanation if Tennessee intends to utilize the In-Lieu Fee Program.<sup>131</sup> Our Procedures provide measures that Tennessee must follow during wetland restoration and requires Tennessee to monitor and record the success of wetland revegetation annually until revegetation is successful. Our Procedures define the criteria by which wetland revegetation may be considered successful. As such, we find that the restoration measures and monitoring requirements set forth in our Procedures are adequate for the project.

#### **14. Vegetation**

112. The Corps requests that Tennessee implement an Integrated Vegetation Maintenance approach that is consistent with the National Invasive Species Management Plan and provide examples how Tennessee may implement this approach. As discussed in section B.3.1 of the EA, Tennessee will implement an Invasive Species Management Plan to avoid the spread of invasive species during construction, operation, and maintenance of the project and will monitor the restored rights-of-way following construction to manage invasive species. Environmental Condition 19 requires that Tennessee incorporate additional measures in coordination with applicable state agencies, which may include, but are not limited to, wash stations. The Corps may require additional measures associated with its federal authority and applicable permits. Environmental Condition 9 requires Tennessee to obtain and comply with all federal permits and permit conditions.

113. Ms. Atwater-Williams comments that Tennessee's Invasive Species Management Plan provides for monitoring and mitigation of noxious and invasive species for up to 10 years, but that this period is inadequate. Similarly, BRPC and Mass Audubon request that additional measures be included in Tennessee's Invasive Species Management Plan,

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<sup>131</sup> Under the Corps' section 404 guidance, "in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development project, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts." Federal Guidance on the Establishment, Use, and Operation of Mitigation Banks, 60 Fed. Reg. 58,605 (Nov. 28, 1995).

including alternate erosion control measures and an independent monitor in perpetuity. Massachusetts DCR also contends that the EA's list of non-native invasive species in the project area is incomplete. We will first note that Tennessee's Invasive Species Management Plan states monitoring will be conducted on an annual basis for up to five years following construction. Further, the non-native invasive species identified in the EA have been documented as occurring in the project area. We recognize this list may not be comprehensive of all non-native species with potential to occur in the area, but it is representative of what is likely to be encountered during construction and operation. As discussed in section B.3.1, Tennessee would conduct seeding using approved seed mixes as approved by the Natural Resources Conservation Service, the local soil conservation agency, or landowner preference. With the use of approved seed mixes, topsoil segregation in particular areas to conserve the seed bank, adherence to the Commission's Plan and Procedures for restoration, and implementation of Tennessee's Invasive Species Management Plan, we agree with the conclusion in the EA that impacts from invasive species would be minimal and adequately mitigated. Thus, we find that permanent monitoring is unwarranted.

114. Ms. Baxter requests clarification regarding Tennessee's required maintenance of the permanent right-of-way in upland forests for the Massachusetts Loop. She asks whether the Commission will permit Tennessee to perform annual maintenance on a 10-foot-wide area over the pipeline in upland forests. The EA and the Commission's Plan state that Tennessee may not mow the entire 35-foot-wide permanent right-of-way in non-wetland areas more often than once every 3 years, and the Plan permits Tennessee to mow a 10-foot-wide corridor centered on the pipeline at a frequency necessary to maintain a herbaceous state to facilitate periodic surveys.<sup>132</sup> Although section B.3.1 does not define the frequency of permitted mowing over the 10-foot-wide strip in upland forests, Tennessee expects to limit mowing over this particular area to a yearly basis, excluding the period between April 15 and August 1.

115. Ms. Baxter questions the basis for defining a riparian area as 25 feet from a stream, implying that the Massachusetts definition encompasses a larger area. Ms. Baxter also asks which riparian areas would be protected. The Commission's Procedures define a riparian area as 25 feet measured from a waterbody's mean high water mark. Riparian restoration and maintenance requirements set forth in the Commission's Procedures apply uniformly to all riparian areas.

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<sup>132</sup> See EA at 58.

116. Ms. Baxter requests that Tennessee be required to notify affected landowners before it decides to use herbicides to minimize the spread of invasive species. She also asks what recourse is available to landowners if they oppose the use of herbicides and whether the restored rights-of-way include the temporary rights-of-way, additional temporary workspace and temporary workspaces. The EA states that Tennessee may apply herbicides, as approved by state and local agencies, to minimize the spread of invasive species.<sup>133</sup> However, section 380.15(f) of our regulations states that chemical control of vegetation should not be used unless authorized by the landowner.<sup>134</sup> If herbicides are used during right-of-way maintenance in areas not authorized by the landowner, the landowner should follow the complaint resolution procedures the Commission requires Tennessee to develop and implement in Environmental Condition 24. The EA also states that Tennessee proposes to monitor the restored rights-of-way annually for up to five years following construction to manage invasive species within the restored rights-of-way, which includes temporary workspaces and additional temporary workspace areas.

117. Massachusetts DCR notes that approximately 15 acres of the proposed construction will be on its land, which will require a construction and access permit. Massachusetts DCR states the EA failed to identify the Massachusetts DCR permit that Tennessee needs. Massachusetts DCR also requests that Tennessee reduce the temporary workspace, including additional temporary workspace areas, and the impacts in these areas. The permit and approvals list provided in section A.9 of the EA is representative for the project, but is not inclusive of every permit or approval that may be necessary. Tennessee is responsible for identifying and obtaining any and all necessary federal and federally delegated permits and authorizations to construct its project. Furthermore, as stated in the EA,<sup>135</sup> Tennessee has committed to work with Massachusetts DCR staff during the permitting and construction phases of the project to reduce impacts and avoid certain features within Otis State Forest. Tennessee has already modified its original construction workspaces to reduce impacts on Otis State Forest by about 2.1 acres. Tennessee has also committed to returning temporary workspaces to general pre-construction conditions and has developed a compensation plan, in collaboration with Massachusetts DCR, for temporary and permanent impacts on Otis State Forest.

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<sup>133</sup> *Id.* at 59.

<sup>134</sup> 18 C.F.R. § 380.15(f) (2015).

<sup>135</sup> EA at 76.

118. Massachusetts DCR recommends that the Commission consider additional measures to ensure long-term restoration because the revegetation potential in the project area is poor, i.e., segregation and stockpiling of all topsoil prior to construction and using only native seed mixes at the project site. Tennessee has committed to implementation of the Commission's Plan, which includes requirements for segregation of topsoil in cultivated or rotated croplands, pastures, residential areas, hayfields, and other areas at the landowner's or land managing agency's request. The Commission's Plan also includes the requirement to seed disturbed areas in accordance with written recommendations for seed mixes, rates, and dates obtained from the local soil conservation authority or the request of the landowner or land management agency.

119. BRPC recommends that the Commission require Tennessee to consider using an alternative method of silt-fencing and straw-baling to reduce the risk of the inadvertent introduction of invasive species, since hay bales often contain seed stock from invasive plants. BRPC also recommends that Tennessee carefully select all fill materials to protect against the introduction of invasive species, require its employees to clean vehicles, clothing, and boots before and after working in the project area, and remove all existing invasive species along its right-of-way. The Plan requires that straw must be weed free when used as a mulch. The restored rights-of-way will be monitored per Tennessee's Invasive Species Management Plan and the FERC Plan, which defines successful revegetation based on reestablishing non-nuisance vegetation to a density and cover similar to adjacent undisturbed lands. In addition, Environmental Condition 19 requires that Tennessee incorporate additional measures in coordination with applicable state agencies, which may include, but are not limited to, wash stations. We conclude these measures are adequate.

### **15. Threatened, Endangered, and Special Status Species**

120. Mass Audubon expresses concern that special status species are not adequately discussed in the EA and that, in particular, the mitigation measures for the American bittern (*Botaurus lentiginosus*) and wood turtle (*Glyptemys insculpta*) at the Tyringham pipeyard in Tyringham, Massachusetts are inadequate. Since issuance of the EA, Tennessee committed to removing the Tyringham pipeyard from the project. Thus, no impacts to special status species at the Tyringham pipeyard site will occur.

121. Tennessee proposed, as part of its Clean Water Act section 401 Water Quality Certification with the Connecticut Department of Energy and Environmental Protection, a dam-and-pump crossing method at Muddy Brook and Stony Brook where dwarf wedgemussels, a federally endangered mussel species, were found. The FWS requested that Tennessee evaluate the use of a flume crossing at Muddy and Stony Brooks to minimize impacts on the dwarf wedgemussel and the EA recommends this as Environmental Condition 15. Tennessee filed its evaluation in response to the EA and determined that impacts on the stream bottom would be similar from either the flume or

dam-and-pump methods. In addition, Tennessee notes that the Connecticut Department of Energy and Environmental Protection have not requested an alternate crossing method, as opposed to the dam-and-pump. Since Tennessee provided the recommended evaluation, we will not adopt Environmental Condition 15 in the EA as a condition of the order.

122. Section 4.1 of the EA discusses the New England cottontail rabbit (*Sylvilagus transitionalis*) which, at the time of development of the EA, was a candidate species for listing under the Endangered Species Act. On September 15, 2015, the FWS issued its 12-month finding on the petition to list the New England cottontail rabbit and found that listing of the species was not warranted at that time.<sup>136</sup> Thus, the species is no longer considered a candidate species for listing under the Endangered Species Act.

123. Massachusetts DCR contends that the proposed site is a BioMap 2 Core Habitat for Spotted Turtles, a species of greatest conservation need under the state's Wildlife Action Plan, and that the EA failed to address impacts to the spotted turtle during construction or impacts to wildlife habitat quality. Massachusetts DCR states that it has requested Tennessee conduct a survey to determine whether the spotted turtle occurs in the area and prepare a mitigation plan if the spotted turtle does occur. The spotted turtle is not federal or state-listed as a threatened, endangered, or candidate species. It holds a rank of G5, indicating it is globally secure, widespread, and abundant. It also holds a rank of S4, indicating within the state it is apparently secure and uncommon, but not rare.

## 16. Agriculture

124. NYSDAM states that a typical construction profile for agricultural areas showing the location of topsoil stock piles is not contained in the EA. While the typical construction profiles in the EA do not portray topsoil segregation or the location of topsoil stock piles, Tennessee has committed to adhering to the Commission Plan which specifies areas where topsoil segregation is required, such as agricultural areas. In addition, NYSDAM requests that topsoil be segregated at construction entrances where geotextile fabric will be placed under rock used to build the entrance in agricultural areas. To address NYSDAM's comments, Environmental Condition 6 has been modified to require that Tennessee provide additional typical construction profiles and locations where topsoil will be segregated at construction entrances in its Implementation Plan.

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<sup>136</sup> See U.S. Dep't of the Interior, Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the New England Cottontail as an Endangered or Threatened Species, 80 Fed. Reg. 55,286 (2015).

125. NYSDAM also states that, in New York, rock may not be used for backfill within 24 inches of the ground surface in mesic soils and within 30 inches of the ground surface in frigid soils. Although Tennessee has committed to using rock within backfill material only to the top of the existing bedrock profile, Environmental Condition 6 has been modified to require that Tennessee adhere to the standard as specified by NYSDAM.

126. Massachusetts Department of Agricultural Resources (Massachusetts DAR) states that the Tyringham pipeyard is located on land protected by the Massachusetts Agricultural Preservation Restriction and Article 97 of the Massachusetts Constitution. Massachusetts DAR states that the restriction prohibits activities that are detrimental to the actual or potential agricultural use of the land, uses or activities which are inconsistent with the purpose of the restriction, and placement of non-agriculturally related temporary or permanent structures on the land. The location of a pipeyard would consequently be prohibited unless released. Massachusetts DAR states that the project would impact active agricultural land in the Town of Sandisfield. Any loss of active agricultural land would conflict with the state's policy that no net loss of agricultural land occurs. Thus, Massachusetts DAR recommends that Tennessee be required to locate the pipeyards in unrestricted non-agricultural land. Since issuance of the EA, Tennessee committed to removing three of the four pipeyards located in Massachusetts from the project scope, including the Tyringham pipeyard. The remaining pipeyard at South Beech Plain Road in the Town of Sandisfield, Massachusetts will temporarily affect about 3.5 acres of agricultural land during construction. No permanent impacts on agricultural land within the South Beech Plain Road pipeyard will occur due to operation of the project; however, Tennessee states it will use a portion of the 3.5-acre field for wetland mitigation.

## **17. Socioeconomics**

### **a. Employment**

127. BRPC contends that because the project would require 175 local construction workers, which represents 4 percent of the supply of construction workers in Berkshire County, other construction projects in the county could be delayed. As discussed in section B.6.1 of the EA, Tennessee estimates that the construction of the Massachusetts Loop would require 250 construction workers between May and October 2016, 70 percent of which would likely be local (or 175 workers), provided they are available for employment. As the construction period will be only six months, we agree with the EA's conclusion that any effect on local unemployment rates and other construction projects in Berkshire County would be brief and not significant.

128. The Mayers comment that the project will not provide long-term local employment. Because Tennessee will use its current employees to operate the project, no permanent workers will be required.<sup>137</sup>

**b. Traffic and Roadways**

129. BRPC requests that the Town of Sandisfield be included in detour planning because potential road closures and detours would inconvenience local residents and may create issues with emergency responders. Additionally, BRPC contends that all roads in Berkshire County be bored, rather than open-cut. BRPC and several other commentors note that the roads in the county are incapable of carrying heavy equipment traffic and will be significantly impacted by the project; and that assistance from local law enforcement for traffic flow will not be available. The Siting Board requests that Tennessee perform road repairs under a plan approved by the Sandisfield Board of Selectmen and that Tennessee develop a Traffic Management Plan to address the impacts of fully closing the road during project construction and recommends that full road closure be instituted as a last resort.

130. As discussed in section B.6.2 of the EA, Tennessee proposes to open cut 3 of the 17 public road crossings. Tennessee will obtain the necessary local permits for road crossings, regardless of crossing method, through which coordination with local officials and law enforcement, or the Massachusetts State Police, will be completed. During the open-cutting process, roads will be closed to the public but a detour, or a single-lane of traffic if a detour is not feasible, will be made available. Roads may be closed for brief periods when the pipeline is laid. We agree with the EA's conclusion that the impact on traffic and roadways in the project area would be minor and temporary. Tennessee has also developed a Massachusetts Traffic and Transportation Management Plan that was submitted to and reviewed by the Massachusetts Executive Office of Energy and Environmental Affairs as part of its Final Environmental Impact Report under the Massachusetts Environmental Protection Act process for which a certificate was issued on April 17, 2015.

131. BRPC also requests that we require Tennessee to repair and replace any infrastructure in Berkshire County that fails or deteriorates due to the project. Tennessee has committed to restoring all roads to their original status, unless otherwise directed by the landowner or managing agency.

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<sup>137</sup> See EA at 79.

132. Massachusetts DCR requests that Tennessee develop, in conjunction with Massachusetts DCR, a more comprehensive plan to address illegal off-highway vehicle use along the pipeline corridor and access roads inside the Otis State Forest and Spectacle Pond Farm during and after construction. Massachusetts DCR is concerned about the impacts of increased use of these vehicles along the corridor. Mass Audubon expresses concern that Massachusetts DCR does not have the resources to enforce off-highway vehicle restrictions. Tennessee will adhere to the Commission's Plan, which describes measures to prevent off-road vehicles from using the right-of-way, such as installing signs, fences with locking gates, pipe barriers, boulders, conifers, or other barrier across the right-of-way.

**c. Housing**

133. BRPC contends that the non-local construction workers would displace seasonal tourists from temporary accommodations in the area, which would then harm local businesses. As stated in the EA and acknowledged in BRPC's comment, Berkshire County has 7,894 housing units available for seasonal and temporary use, 34 hotels, and 15 campgrounds.<sup>138</sup> Given these numbers and the estimated 75 non-local construction workers needed for the project, we agree with the EA's conclusion that the project will not result in significant negative impacts on housing availability or the tourism economy in Berkshire County.<sup>139</sup>

**d. Property Value, Property Impacts, and Property Insurance**

134. STOP suggests that the location of the proposed Massachusetts Loop on existing rights-of-way will result in severe impacts to property owners, which includes removal of trees on their property. STOP also requests that we require Tennessee to obtain adequate insurance for all affected property owners or that Tennessee reimburse the owners for any increase in their property insurance premiums. In addition, STOP disputes the referenced studies in the EA that Commission staff relied on to refute property value concerns.

135. The Massachusetts Loop will require 12.5 acres of new permanent right-of-way adjacent to Tennessee's existing easement.<sup>140</sup> The temporary right-of-way will be revegetated and be allowed to revert to pre-existing conditions upon completion of

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<sup>138</sup> See Table B-11 of the EA; BRPC's November 23, 2015 Comment at 11.

<sup>139</sup> See EA at 82-83.

<sup>140</sup> See *id.* at 10.

construction.<sup>141</sup> The contractor yards and pipeyards along the Massachusetts Loop would be leased from the landowners and returned to pre-construction conditions, or as required by applicable permits.<sup>142</sup> Approximately 43 acres of forest land will be affected by the Massachusetts Loop, of which an estimated 34 acres will be temporary.<sup>143</sup> No residences are located within 50 feet of the construction areas relating to the Massachusetts Loop.<sup>144</sup> Further, the EA found that impacts on forest lands would be long-term, but not significant<sup>145</sup> as it would take about 20 years for mature trees to re-establish.<sup>146</sup>

136. The EA provides numerous mitigation measures to protect landowners. In addition, Environmental Condition 24 requires Tennessee to inform landowners of the procedure to file complaints, as well as provide landowners with a resource at the Commission to assist in the resolution of any complaints.

137. As stated in the EA, the majority of the pipeline segments will be located within existing rights-of-way. Where new easements on private property are required, the EA states that Tennessee will compensate landowners for the easements, the temporary loss of land use, and any damages.<sup>147</sup> As for whether a pipeline easement would affect insurance premiums, insurance advisors consulted on other natural gas pipeline projects reviewed by the Commission indicated that pipeline infrastructure does not affect homeowner insurance rates.<sup>148</sup> The newspaper articles and opinion column that STOP

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<sup>141</sup> *See id.*

<sup>142</sup> *See id.* at 14.

<sup>143</sup> *See* Appendix H to the EA.

<sup>144</sup> *See* EA at 73 (identifying only 3 residences near the Connecticut Loop).

<sup>145</sup> *See id.*

<sup>146</sup> *See id.*

<sup>147</sup> *See id.* at 74-75.

<sup>148</sup> *See, e.g., Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 99 (2015).

provided do not warrant us to conclude that the project would significantly affect property values.<sup>149</sup>

e. **Environmental Justice**

138. Ms. Esteves and STOP contend that the Town of Sandisfield should be considered an environmental justice area because its residents are low-income. Ms. Esteves states that Tennessee has singled out the town for development because it is poor with few resources.

139. Approximately 4.9 percent of the population of the Town of Sandisfield is below the poverty line, which is less than the 12.8 percent below the poverty line in Berkshire County, Massachusetts.<sup>150</sup> The EA's analysis indicates that the project would not adversely affect land use, safety, or other environmental resources in the Sandisfield area. Further, as the EA explained, because Tennessee proposed to modify its existing system to serve three new customers, the placement of the proposed facility was based on proximity to Tennessee's existing infrastructure, rather than the socioeconomic status of the communities. Thus, we agree with the EA's conclusion that the project would not disproportionately affect low-income populations.

**18. Air Quality and Noise**

140. Ms. Kristofferson comments that Tennessee has not been truthful in its discussion regarding potential noise levels and the harmful health effects of blowoffs from Compressor Station 261. Ms. Kristofferson asks why Tennessee is not required to use the

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<sup>149</sup> For example, the article cited by STOP, Gilad Edelman, *Pipeline Companies Paying More to Cross Private Land*, TEXAS TRIBUNE, June 18, 2014, does not discuss property devaluation caused by pipelines. The article concerns condemnation proceedings, in which juries have awarded landowners more than the price that pipeline companies have offered. Jury awards and settlement values have increased because population growth has increased land value. In another article, Rachael Smith, *Real-Estate Agents: Proposed Pipeline Already Affecting Sales*, THE NEWS & ADVANCE, May 18, 2015, three real estate agents could not agree whether a pipeline project would affect property sales. See Attachment I of STOP's November 23, 2015 Comment on the EA.

<sup>150</sup> See U.S. Census Bureau, QuickFacts, [quickfacts.census.gov](http://quickfacts.census.gov); U.S. Census Bureau, American FactFinder, [factfinder.census.gov](http://factfinder.census.gov). CEQ, ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT at 25 (Dec. 10, 1997); see EA at 85-86.

latest technology to prevent these problems, as it has proposed for the NED Project. The proposed modifications to Compressor Station 261 are minor and will not increase air emissions or noise at the facility beyond current permitted levels.

141. The Siting Board requests that Tennessee be required to use noise barriers around water pumps used for dewatering during nighttime hours. As discussed in section B.8.2 of the EA, noise levels from the water pumps may exceed the 55 decibels on the A-weighted scale for day-night-average sound level threshold at noise sensitive areas (NSAs) within 400 feet of the activity. We concur that noise barriers are reasonable to reduce noise impacts on nearby NSAs. We have added Environmental Condition 27 to this order to require Tennessee to use noise barriers around water pumps within 400 feet of NSAs during nighttime dewatering activities.

### **19. Reliability and Safety**

142. The Mayers, STOP, Northeast Energy, and Mr. Piacentini express concern about the safety of the pipeline, given a past incident along the existing infrastructure near the Town of Sandisfield in 1981, and contend that Tennessee does not regularly inspect their pipelines. Pipeline safety standards are mandated by regulations adopted by the Department of Transportation (DOT), Pipeline and Hazardous Material Safety Administration, in 49 C.F.R Chapter 601. Tennessee must abide by these standards. In addition, Tennessee states that it has reinforced the procedures and specifications for blasting activities for its projects since 1981 to avoid additional incidents, as discussed in section B.9.1 of the EA. These procedures and specifications are included in Tennessee's *Blasting Plan* for the project. Given the current DOT safety requirements for pipelines and Tennessee's updated procedures, we concur with the EA that these measures will be protective of public safety.

143. Mr. Piacentini also alleges that Tennessee's parent company, Kinder Morgan Energy Partners, L.P., is not financially secure and cannot adequately construct and maintain the proposed project because of recent fluctuations in its credit rating and market capitalization. Mr. Piacentini contends that Kinder Morgan's financial history will put the community at risk. We disagree with the factual basis of Mr. Piacentini's concerns. Moody's Investors Service, a bond credit rating company, has rated Kinder Morgan's outlook as stable since December 2015.<sup>151</sup>

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<sup>151</sup> Press Release, Moody's Investors Service, Moody's Changes Kinder Morgan's Outlook to Stable (Dec. 8, 2015), *available at* [https://www.moody.com/research/Moodys-changes-Kinder-Morgans-outlook-to-stable--PR\\_340835](https://www.moody.com/research/Moodys-changes-Kinder-Morgans-outlook-to-stable--PR_340835).

144. BRPC states that Tennessee should identify the threat posed by pipeline leaks and explosions, especially since the Massachusetts Loop is located in the same right-of-way as two existing pipelines, as well as identify potential impact zones. BRPC is concerned that local and nearby first responders are not capable of responding to fires, emergencies, and other incidents involving the project. BRPC requests that we require Tennessee to institute appropriate planning and communication with local emergency responders, provide ongoing training for emergency responders involved from the Town of Sandisfield and other areas, conduct individual assessments of the equipment within the Town of Sandisfield and other area fire departments, and provide any necessary equipment and materials and training to local first responders for the life of the project.

145. As detailed in section B.9.1 of the EA, Tennessee has designed and will construct, operate, and maintain the project in accordance with the pipeline safety regulations in 49 C.F.R. Part 192. These regulations are protective of public safety. DOT has exclusive authority to promulgate federal safety standards used in the transportation of natural gas.<sup>152</sup> The DOT prescribes the minimum standards for operating and maintaining pipeline facilities, including the requirement to establish emergency plans, maintain liaison with appropriate fire, police and public officials, and establish a continuing education program.

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

147. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction/installation or operation of facilities approved by this Commission.<sup>153</sup>

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<sup>152</sup> See Memorandum of Understanding Between the Department of Transportation and FERC Regarding Natural Gas Transportation Facilities (Jan. 15, 1993), <http://www.ferc.gov/legal/mou/mou-9.pdf>.

<sup>153</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulations is preempted by the NGA to the extent it conflicts with federal

148. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the NGA is issued to Tennessee, authorizing it to construct and operate the proposed Connecticut Expansion Project, as described and conditioned herein, and as more fully described in this order and in the application and supplements.

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

(1) Tennessee's proposed Connecticut Expansion Project being constructed and made 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 under the NGA 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 listed in Appendix B to this order.

(C) Tennessee's proposed incremental recourse rate under Rate Schedule FT-A is approved, subject to Tennessee reflecting its generally-applicable daily commodity charge as part of the recourse rate.

(D) Tennessee shall file an executed copy of all non-conforming service 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 commencement of service on the proposed facilities.

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regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Tennessee must execute firm contracts equal to the level of service and in accordance with the terms of service represented in its precedent agreement prior to commencement of construction.

(F) Tennessee shall file tariff records that are consistent with the *pro forma* tariff records contained in Tennessee's filing, reflecting inclusion of the project into Tennessee's tariff between 30 and 60 days before the in-service date of the proposed facilities.

(G) Tennessee shall keep separate books and accounting of costs attributable to the proposed incremental capacity and service, as more fully discussed above.

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

(I) The untimely notice of intervention and motions to intervene are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix A**

### **List of Timely Intervenors**

350MA-Berkshire Node

Allegheny Defense Project

Anadarko Energy Services Company

Karen Andrews

Athens Utilities

Atmos Energy Corporation

Jean Atwater-Williams

Susan Baxter

Berkshire Environmental Action Team, Inc.

Berkshire Regional Planning Commission

Ronald M. Bernard

BP Energy Company

Centerpoint Energy Resources Corp.

Chevron U.S.A. Inc.

City of Clarksville Gas and Water Department, City of Clarksville

City of Corinth Public Utilities Commission

City of Florence, Alabama

City of Huntsville, Alabama

City of Waynesboro

Robert Connors

ConocoPhillips Company

Conservation Law Foundation

Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

Delta Natural Gas Company, Inc.

Direct Energy Business Marketing, LLC

Thelma R. Esteves

ExxonMobil Gas & Power Marketing Company

Jeffrey R. Friedman, M.D.

Laura Friedman

Greater Dickson Gas Authority

Hardeman Fayette Utility District

Hartselle Utilities

Henderson Utility Department

Holly Springs Utility Department

Humphreys Country Utility District

Sheila Weller Kelly and John Kelly

Mark Kelso

Massachusetts Energy Facilities Siting Board

Massachusetts PipeLine Awareness Network (whose members consists of Berkshire Environmental Action Team, Conway Pipeline Information Network, Franklin Land Trust, Hilltown Community Rights, Nashoba Conservation Trust, No Fracked Gas in Mass, North Quabbin Energy, North Quabbin Pipeline Action, Stop NY Fracked Gas Pipeline, and Stop the Pipeline Coordinating Committee of Groton)

Morehead Utility Plant Board

Municipal Gas Authority of Mississippi

Roberta Myers

National Fuel Gas Distribution Corporation

National Grid Gas Delivery Companies

New England Local Distribution Companies (which consist Bay State Gas Company; the Berkshire Gas Company; Liberty Utilities (EnergyNorth Natural Gas) Corp.; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company; the Southern Connecticut Gas Company; Westfield Gas & Electric Department; Yankee Gas Services Company)

New Jersey Natural Gas Company

New York Public Service Commission

NJR Energy Services Company

No Fracked Gas

North Alabama Gas District

Northeast Energy Solutions

Diego Ongaro

Barbara Penn

Arnold Piacentini

Portland Natural Gas System, City of Portland

PSEG Energy Resources & Trade LLC

Josephine Solimene Rustin

Jack Sanders

Sandisfield Taxpayers Opposing the Pipeline

Savannah Utilities

Susan Sedlmayr

Sheffield Utilities

Shell Energy North America (US), L.P.

Springfield Gas System, City of Springfield

SWEPI LP

Town of Linden

Town of Sandisfield, Massachusetts

Toxics Action Center

Tuscumbia Utilities

West Tennessee Public Utility District

Hilde Weisert

Nathan Wright

## Appendix B

### Environmental Conditions

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

1. Tennessee shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the order. Tennessee must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of 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**, 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 EIs' 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 with station positions for all facilities approved by the order. All requests for modifications of

environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, contractor/pipeyards, additional 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 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 individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Tennessee 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, 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), with the opportunity for OEP staff to participate in session(s);
  - f. the company personnel and specific portion of Tennessee's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs;
  - 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;
  - i. typical construction profiles detailing topsoil segregation and the locations of topsoil stockpiles;
  - j. locations where topsoil will be segregated at construction entrances within agricultural land; and
  - k. locations where rock will not be used for backfill within 24 inches of the ground surface in mesic soils and within 30 inches of the ground surface in frigid soils in agricultural areas.
7. Tennessee shall employ at least one EI per construction spread. The EIs 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 **bi-weekly 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. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Tennessee must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other 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 certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to the completion of final project clean-up**, Tennessee shall remove excess rock in all cultivated or rotated cropland, managed pastures, hayfields, and residential areas affected during construction. Rock that remains in the restored rights-of-way must be consistent with the size, density, and distribution of rock in adjacent areas not affected by construction.
13. **Prior to construction**, Tennessee shall file a Winter Construction Plan with the Secretary for review and written approval by the Director of OEP. The plan shall address all items included in Section III.I of the Commission's Plan.
14. **Prior to construction**, Tennessee shall file with the Secretary the location, by MP, of all private wells within 200 feet of construction workspaces or blasting activities.
  - a. Tennessee shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells; and
  - b. **within 30 days of placing the facilities in service**, Tennessee shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each complaint was resolved.
15. **Prior to construction**, Tennessee shall file with the Secretary revised alignment sheets depicting the following workspace modifications:
  - a. Along the New York Loop:
    - (1) adoption of the open cut construction method at Meads Land Road and reduction in size of ATWS 56 and ATWS 57 at MP 3.4;
    - (2) reconfiguration of ATWS 62 at MP 4.1;
  - b. Along the Massachusetts Loop:
    - (1) reduction in size of ATWS 24 at MP 0.0;

- (2) extension of the road bore at Cold Spring Road at MP 2.5;
    - (3) revision of the footprint of the access road (#5) at MP 3.8;
  - c. Along the Connecticut Loop:
    - (1) Adoption of the open cut construction method at Halladay Avenue West at MP 1.6
16. **Prior to construction**, Tennessee shall file with the Secretary clarification on requested workspace modifications, revised alignment sheets depicting the following workspace modifications, or justification for why the changes cannot be implemented, for the review and written approval of the Director of OEP:
  - a. Along the Massachusetts Loop:
    - (1) clarify whether the reduction in size of ATWS 24 will maintain a 50-foot set back from the tributary to Clam River (SMA-03) at MP 0.0;
  - b. Along the Connecticut Loop:
    - (1) clarify why extending the road bore at Hickory Street to avoid Wetland WCT-56 at MP 0.4 would increase impacts on the wetland;
    - (2) shift ATWS 15 to the north to maintain a 50-foot set back from Wetlands WCT-41A and WCT-41B at MP 6.1; and
    - (3) reconfigure or eliminate ATWS 22 to maintain a 50-foot set back at Wetlands WCT-53A and WCT-53B at MP 7.7.
17. **Prior to construction**, Tennessee shall file documentation of completed consultations with the Connecticut Department of Energy and Environmental Protection, Massachusetts Department of Environmental Protection, and Corps regarding vernal pools and the mitigation measures it would implement to avoid and minimize potential adverse effects on vernal pools.
18. **Prior to construction**, Tennessee shall file all outstanding wetland and biological survey results.
19. **Prior to construction**, Tennessee shall develop preventive measures, such as setting up wash stations to prevent the spread of invasive species and noxious weeds resulting from construction and restoration activities. These measures, and any applicable state permit conditions, shall be included in Tennessee's *Invasive Species Management Plan* and filed with the Secretary for review and written approval by the Director of OEP.
20. **Prior to construction**, Tennessee shall consult with Massachusetts Department of Fisheries and Wildlife to determine the construction-timing window for both coldwater and warmwater fisheries and file the supporting agency correspondence with the Secretary.

21. **Prior to construction**, Tennessee shall consult with FWS New York and New England field offices to determine whether any bald eagle nests are within the vicinity of the project area, according to the FWS bald and golden eagle nest database, and file that information with the Secretary.
22. Tennessee shall not begin construction activities **until**:
  - a. Commission staff receives comments from the FWS regarding the proposed action;
  - b. Commission staff completes formal consultation with the FWS for the dwarf wedgemussel; and
  - c. Tennessee has received written notification from the Director of OEP that construction or use of mitigation may begin.
23. **Prior to construction**, Tennessee shall complete the following and file with the Secretary for review and written approval by the Director of OEP:
  - a. a construction monitoring plan for the 23 Connecticut state-listed species, approved by the Connecticut Natural Diversity Database; and
  - b. avoidance, minimization, and mitigation measures for the two squarrose sedge populations within the workspace.
24. Tennessee shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the rights-of-way. Prior to construction, Tennessee shall mail the complaint procedures to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, Tennessee shall:
    - (1) provide a local contact that the landowners will call first with their concerns; the letter shall indicate how soon a landowner can expect a response;
    - (2) instruct the landowners that if they are not satisfied with the, they can call Tennessee's Hotline; the letter shall indicate how soon to expect a response; and
    - (3) instruct the landowners that if they are still not satisfied with the response from Tennessee's Hotline, they can contact the Commission's Landowner Helpline at 877-337-2237 or at [LandownerHelp@ferc.gov](mailto:LandownerHelp@ferc.gov).
  - b. In addition, Tennessee shall include in its bi-weekly status report a copy of a table that contains the following information for each problem/concern:

- (1) the identity of the caller and date of the call;
  - (2) the location, by MP, and identification number from the authorized alignment sheet(s) of the affected property;
  - (3) a description of the problem/concern; and
  - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
25. **Prior to construction**, Tennessee shall address the effects of construction traffic on the Josiah Hulet House and file avoidance and mitigation measures with the Secretary for the review and written approval of the Director of OEP.
26. **Prior to construction or implementation of any treatment plans/measures**, Tennessee shall:
- a. file with the Secretary any outstanding cultural resources surveys and evaluation reports, any necessary, treatment plans, and the New York, Massachusetts, and Connecticut State Historic Preservation Office's comments on any reports and plans;
  - b. allow the Advisory Council on Historic Preservation the opportunity to comment if historic properties would be adversely affected; and
  - c. ensure that Commission staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Tennessee in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.
- All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering "**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**"
27. **During construction**, Tennessee shall use noise barriers around water pumps during nighttime hours where NSAs are within 400 feet of dewatering activities to minimize noise impacts.