

116 FERC ¶ 61,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Tennessee Gas Pipeline Company

Docket No. CP06-18-000

ORDER ISSUING CERTIFICATE

(Issued July 20, 2006)

1. On October 31, 2005, Tennessee Gas Pipeline Company (Tennessee) filed an application pursuant to section 7 of the Natural Gas Act (NGA) for authority to construct and operate approximately 7.8 miles of 24-inch diameter pipeline in Essex and Middlesex Counties, Massachusetts. For the reasons discussed below, the Commission finds that the proposal is required by the public convenience and necessity and grants the requested authorization, subject to conditions.

**I. Background and Proposal**

2. Tennessee proposes to construct 7.8 miles of twenty-four inch pipeline connecting its Beverly-Salem Line 270C-100 to its DOMAC Line 270C-1100 in Essex and Middlesex Counties, Massachusetts. The new line begins in Saugus, Massachusetts, and terminates in Lynnfield, Massachusetts and is designed to increase the natural gas capacity in the New England area by 82,300 Dth/d and serve various points on Tennessee's New England system. Tennessee proposes to construct the majority of the project within an existing utility corridor to minimize environmental impact.

3. After Tennessee held two open seasons for the project, Distrigas of Massachusetts L.L.C. (DOMAC) entered into a binding precedent agreement for all of the proposed 82,300 Dth/d of capacity. Tennessee proposes an incremental recourse rate for firm service under Rate Schedule FT-A firm transportation service, consisting of a monthly reservation rate of \$7.9931, a \$0.00 commodity rate, applicable demand and commodity surcharges and applicable fuel and loss retention. Tennessee has submitted a pro forma tariff sheet to establish the incremental Rate Schedule FT-A recourse rates for the project. Tennessee calculated the rates based on an estimated cost of the project of \$38 million and a depreciation rate of five percent. Tennessee states that all of the other cost of service factors are consistent with the settlement in Tennessee's last rate case in Docket No. RP95-112.

4. Tennessee states that DOMAC has agreed to pay a negotiated rate for a primary term of twenty years. The negotiated rate consists of a monthly reservation rate of \$7.2392 per Dth and a daily commodity rate of \$0.00 per Dth exclusive of surcharges. In addition, the shipper will pay applicable fuel and lost and unaccounted for charges. Tennessee states that it will make the requisite negotiated rate filing after the service agreements are executed and prior to commencement of service

5. Tennessee states that there are differences between the project's transportation agreement and its pro forma FT-A transportation agreement. It notes that the differences are primarily language revisions needed to reflect the timing uncertainties associated with the completion of the project's construction. Because the differences do not constitute material deviations from the pro forma FT-A agreement, Tennessee asserts that the project's service agreement is not a non-conforming agreement.

6. Tennessee requests that the Commission grant the requested authorization by August 1, 2006, so that it can meet the estimated in-service date of September 2007.

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

7. Notice of Tennessee's application in this proceeding was published in the *Federal Register* on December 15, 2005 (70 Fed. Reg. 70605). Timely, unopposed interventions were filed by AES Battery Rock LNG, LLC, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., DOMAC, the Massachusetts Energy Facilities Siting Board, New England Local Distribution Companies,<sup>1</sup> PSEG Energy Resources & Trade LLC, and the Rhode Island State Energy Statutory Trust 2000. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>2</sup>

8. Motions to intervene out-of-time were filed by the City of Boston, Massachusetts, KeySpan Delivery Companies,<sup>3</sup> and National Grid USA (National Grid). These parties

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<sup>1</sup> The New England Local Distribution Companies include: Bay State Gas Co.; The Berkshire Gas Co.; Connecticut Natural Gas Corp.; Fitchburg Gas and Electric Light Co.; the City of Holyoke, Massachusetts Gas and Electric Dept.; New England Gas Co.; Northern Utilities, Inc.; NSTAR Gas Co.; The Southern Connecticut Gas Co.; and Yankee Gas Services Co.

<sup>2</sup> 18 C.F.R. § 385.214(a)(3)(2005).

<sup>3</sup> The KeySpan Delivery Companies include: the Brooklyn Union Gas Co. d/b/a KeySpan Energy Delivery New York, KeySpan Gas East Corp. d/b/a KeySpan Energy

have demonstrated that they have an interest in this proceeding and that their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will grant the motions to intervene out-of-time.<sup>4</sup>

9. National Grid filed comments requesting a hearing and settlement judge procedures. Tennessee filed an answer to the comments. National Grid's objections to the application concern Tennessee's proposal to be granted a 50-foot easement within National Grid's right-of-way, which National Grid states would have a detrimental impact on its existing and planned electric transmission facilities.

10. We will deny National Grid's request for a trial-type hearing. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. Where there are material issues of fact in dispute that can be resolved on the basis of a written record, an evidentiary, trial-type hearing is not needed.<sup>5</sup> We note that Tennessee's consultations with National Grid have resulted in pipeline route realignments which address many of National Grid's concerns. Further, Tennessee is continuing to negotiate with National Grid on realignment issues. Because the written record in this case has provided the Commission with a sufficient basis for resolving the material issues in dispute raised by National Grid, we will deny its request for a trial-type hearing.

### **III. Discussion**

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

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Delivery Long Island; and Boston Gas Co., Colonial Gas Co., EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively KeySpan Energy NE), all subsidiaries of KeySpan Corp.

<sup>4</sup> 18 C.F.R. § 385.214(d)(2005).

<sup>5</sup> See *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

**A. The Certificate Policy Statement**

12. On September 15, 1999, the Commission issued a Policy Statement<sup>6</sup> providing guidance as to how proposals for certificating new construction will be evaluated. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. Our 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 existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of a new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

14. The Commission has consistently determined that where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that existing shippers will not subsidize the project.<sup>7</sup> Tennessee proposes to charge its sole expansion shipper, DOMAC, an incremental rate for service utilizing the expansion capacity. Therefore, this project meets the threshold requirement of the Policy Statement because there will be no subsidy by existing customers. Next, the project will not adversely affect existing shippers because it will not degrade any service currently provided to existing shippers. The project will not adversely impact existing pipelines and their shippers because it will not replace any existing service on Tennessee's pipeline

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<sup>6</sup>*Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC ¶ 61,227 (1999); *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000); *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

<sup>7</sup> *See, e.g., Transcontinental Gas Pipeline Corp.*, 98 FERC ¶ 61,155 (2002).

or on any other existing pipeline. Additionally, because the proposed pipeline route is located along an existing utility right-of-way, impact upon landowners and surrounding communities should be minimized.

15. For the foregoing reasons and because of the expressed market demand for the project evidenced by the precedent agreement for all of the project's capacity, we find that Tennessee's project is required by the public convenience and necessity.

## **B. Rates**

### **1. Incremental Transportation Rates**

16. Tennessee proposes an incremental Rate Schedule FT-A recourse rate consisting of a monthly reservation charge of \$7.9931 per Dth and a daily commodity rate of \$0.00 per Dth. Other charges for this firm service would include the payment of Tennessee's applicable demand and commodity surcharges, and applicable fuel and loss retention. Tennessee has also offered, and the shipper<sup>8</sup> has accepted, the option of choosing a negotiated monthly reservation rate of \$7.2392 per Dth and a daily commodity rate of \$0.00 per Dth. These negotiated rates are fixed for a twenty-year term and are exclusive of surcharges. In addition, the shipper will pay applicable fuel and lost and unaccounted for charges.

17. Tennessee states that, with the exception of the depreciation rate, it calculated the incremental cost of service using the Commission-approved cost-of-service factors underlying Tennessee's last rate case in Docket No. RP95-112. Tennessee used a 5 percent depreciation rate to coincide with the twenty-year service agreement. Tennessee's cost-of-service consists of O&M expenses of \$67,600, depreciation expenses of \$1,904,400, other taxes and expenses of \$152,350, and pretax return expenses of \$5,769,600 which result in a total annual cost-of-service for the Essex-Middlesex Project of \$7,893,950.

18. Tennessee's precedent agreement states that both the receipt and delivery points of the Essex-Middlesex Project are located in Zone 6 of its system. Tennessee's system base reservation rate for Rate Schedule FT-A for transactions that have both receipt and delivery points located in Zone 6 is \$3.16 per Dth. Tennessee's proposed incremental Rate Schedule FT-A recourse rate of \$7.9931 per Dth is more than twice the Zone 6 system Rate Schedule FT-A rate; hence, the Essex-Middlesex Project does not qualify for

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<sup>8</sup> DOMAC has executed a binding precedent agreement for all of the 82,300 Dth/d of firm incremental capacity.

rolled-in rate treatment. Accordingly, we will approve Tennessee's proposed incremental recourse rate, which consists of a monthly reservation rate of \$7.9931 per Dth, a maximum daily commodity rate of \$0.00 per Dth, applicable demand and commodity surcharges, and applicable fuel and loss retention as the initial incremental rates.

## **2. Service Agreements**

19. Tennessee submitted a precedent agreement for the proposed transportation service. Attached to the precedent agreement as Exhibit A is modified FT-A gas transportation agreement for which Tennessee seeks approval. Tennessee states that there are certain differences between the project's transportation agreement and Tennessee's pro forma FT-A Transportation Agreement. Tennessee states that these differences do not constitute material deviations from its pro forma FT-A Transportation agreement. Tennessee also states that in the event the Commission finds that the service agreement materially deviates from the pro forma FT-A agreement, that Tennessee will make the requisite material deviation filings after the service agreement is executed and prior to the commencement of service under the project. Finally, Tennessee states that it will make the requisite negotiated rate filing after the service agreement is executed and prior to the commencement of service under the project.

20. The differences between the pro forma FT-A Transportation Agreement and the transportation agreement proposed for service over this project are as follows:

The Transportation Agreement filed with this application contains "whereas" clauses, stating that Tennessee will make a filing with the Commission relating to the Essex-Middlesex Project, requesting authorization to render firm transportation service and to construct the necessary facilities to provide such service.

Article II of the transportation agreement provides that service will not commence until after Tennessee has received the requisite authorizations to provide such service and has constructed the project facilities.

Article IV indicates that Tennessee will construct facilities to provide transportation service to the shipper.

Sections 2.1, 2.2, 6.1, 9.1, 11.1, and 12.1 have been modified to reflect the commencement date and/or need for acceptable authorizations.

Section 15.5 states that the service agreement supercedes and cancels the precedent agreement except as specified in the precedent agreement.

21. These differences do constitute material deviations from the pro forma agreement found in Tennessee's tariff since all language different from that in the pro forma agreement is deemed to be material.<sup>9</sup> However, not all material deviations are impermissible. If the Commission finds that such deviations do not constitute a substantial risk of undue discrimination, the Commission may permit the deviations. The filed service agreement provides for FT-A service in a manner that is consistent with the FT-A service described in Tennessee's tariff and does not create a risk of undue discrimination against other shippers. Thus, the deviations contained in the non-conforming service agreement are permissible. Therefore, the Commission will accept the proposed service agreement subject to Tennessee's making the requisite tariff filings after the service agreement is executed and prior to commencement of service.

22. We note that the Commission is not approving the proposed negotiated rates in this order; rather it is approving the recourse rates as initial incremental FT-A rates for the proposed service.<sup>10</sup> Consistent with the Alternative Rate Policy Statement,<sup>11</sup> and the Commission's decision in *NorAm Gas Transmission Company*,<sup>12</sup> the Commission is directing Tennessee to file not less than 30 days nor more than 60 days prior to the commencement of service on the expansion facilities, its negotiated rate expansion contract which contains the material deviations from the pro forma agreement found in Tennessee's tariff. Tennessee must also disclose all consideration received that is associated with the agreement. Finally, Tennessee must also maintain separate and

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<sup>9</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 33 (2003).

<sup>10</sup> The Commission has declined to examine negotiated rates in the context of its review of the merits of a certificate application. *See, East Tennessee Natural Gas Company*, 98 FERC ¶ 61,331 (2002); *Texas Eastern Transmission Corporation*, 95 FERC ¶ 61,057, *order on reh'g*, 95 FERC ¶ 61,367 (2001); and *Independence Pipeline Company, et al.*, 91 FERC ¶ 61,102 (2000) and 92 FERC ¶ 61,022 (2000), *order on reh'g*, 92 FERC ¶ 61,367 (2001).

<sup>11</sup> *Alternative to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

<sup>12</sup> *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996) (*NorAm*).

identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA Section 4 or 5 rate case.

### **C. Environmental Analysis**

23. On November 28, 2005, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Essex- Middlesex Project, Request for Comments on Environmental Issues, and Notice of Site Visit and Public Scoping Meeting. Four written comments were received from landowners affected by or adjacent to the proposed route. One written comment from National Grid was received concerning routing the pipeline on powerline ROW. The City of Boston requested intervention and commented about potential effects regarding LNG ship traffic into Boston Harbor. No protests were filed. Our staff addressed the comments in the environmental assessments (EA).

24. The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife habitat, fisheries, federally listed endangered and threatened species, land use, cultural resources, and route alternatives. On May 24, 2006, the EA was mailed to Federal, state and local agencies, public interest groups, affected landowners, newspapers, libraries, and parties to this proceeding and a Notice of the Availability of the Environmental Assessment for the proposed Middlesex-Essex Project was issued. On June 23, 2006, the comment period was closed. In response to our notice we received comments on the EA from Massachusetts Historical Commission (MHC), Commonwealth of Massachusetts Division of Fisheries and Wildlife, Commonwealth of Massachusetts Energy Facilities Siting Board (Massachusetts Siting Board), City of Boston, Saugus River Watershed Council (SRWC) and Tennessee.

25. The MHC indicated that it would continue to work with staff regarding cultural resource issues and would assist staff in developing plans that would avoid, minimize or mitigate any adverse effects to National Register-eligible properties.

26. The Natural Heritage and Endangered Species Program (NHESP) of the Commonwealth of Massachusetts Division of Fisheries and Wildlife outlined its responsibility to protect state-listed species and their habitats and identified Priority and Estimated Habitats that would be affected by the proposed project. Additionally, the NHESP identified seven state-listed species of special concern, two state-listed endangered species and one state-listed threatened species, and stated that the project proponent has been consulting with NHESP to address its concerns and that based on survey results and habitat assessments, NHESP will determine whether the proposed project will result in a “take” of state-listed species. In the Essex-Middlesex EA, staff recommended to the Commission that prior to construction and in consultation with



NHESP, Tennessee file a mitigation plan addressing effects to state-listed species. We believe that acceptance of this recommendation would address NHESP's comments.

27. The Massachusetts Siting Board states that the EA fails to adequately weigh the impact of the loss of screening and other disturbances from construction near residences. In addition, the Massachusetts Siting Board recommends that staff consider further mitigation including further analysis of two route realignments and the use of "tight construction". We believe that the EA adequately addresses both the loss of trees along the existing power line and the subsequent impacts to visual resources as well as the impacts to residences resulting from construction. The EA describes the need for removing these trees and how Tennessee would mitigate for their loss. The EA also describes several measures Tennessee would implement to minimize impacts to adjacent residences and also includes staff recommendations to further minimize impacts to residences.

28. With respect to the alternatives, the staff has received answers from Tennessee to several data requests dealing with variations negotiated between Tennessee and National Grid's subsidiary, New England Power Company (NEPCo), and suggested staff variations. The record includes these communications which address the need for the specifically proposed locations. Nevertheless, as addressed later herein with respect to the SRWC comments, we expect Tennessee to discuss potential alternative locations which have not been addressed and identify any appropriate modifications to us for review.

29. Regarding "tight construction" in the vicinity of residences, we believe that the construction measures proposed by Tennessee and Tennessee's adherence to the recommendations put forth by staff, would allow evaluation and modification of construction measures in the vicinity of residences to sufficiently minimize impacts in these areas.

30. The City of Boston expressed several concerns with the lack of regional energy planning; however, its specific comments in response focused on how the EA did not address the possibility of increased LNG shipping traffic into Boston Harbor resulting from construction and operation of the proposed project. The primary effect of this project would be to allow DOMAC to increase its shipments of natural gas out of the LNG facility via pipeline. There is no associated application to increase the capacity of the DOMAC LNG facility. If DOMAC desires to increase the capacity of its facility and therefore the shipments of LNG to that facility in excess of the currently authorized amount it would have to file for that authority.

31. The SRWC offered several comments in response to the EA. Its comments pertained generally to project scope, water resources, vegetation and wildlife, fisheries and threatened and endangered species, land use, cultural resources and alternatives. Specifically, the SRWC commented that staff's analysis did not consider effects to the City of Lynn drinking water supply, which could be affected by the upstream crossing of the Saugus River and Reedy Meadow. Staff analyzed effects to groundwater and surface water resources including drinking water supplies and determined that if Tennessee adhered to its proposed action, as well as staff recommendations, water resources would not be significantly affected by the construction and operation of the proposed project. We concur. Further, the proposed pipeline crosses Reedy Meadow at the edge and is primarily at the upstream end of the area from its outlet through the Saugus River. The river crossings are unavoidable without routing through densely populated areas.

32. The SRWC also commented that alternative routes and construction methods should be considered to minimize the number of, and effects resulting from, surface waterbody and wetland crossings. We believe that routing the project adjacent to existing ROW assists in the minimization of impacts to surface waterbodies and wetlands since much of the power line is routed through higher areas. We also believe that Tennessee's adherence to our Plan and Procedures as well as its stated construction measures and staff's recommendations would serve to significantly reduce impacts to surface waterbodies and wetlands. We note that in this area of New England it is extremely difficult to avoid waterbodies and wetlands, both of which are ubiquitous. In this case using the existing power line right-of-way minimizes the potential for any significant effect.

33. Additionally, the SRWC, citing the EA, stated that flood water retention capacity could be affected by construction of the proposed project. While construction of the proposed project could affect flood water retention capacity there is no reason to expect that this would be a significant effect, since the project's footprint would be small and the vegetation would help to minimize compaction of the mineral soil. We believe that restoration of surface contours, vegetation, waterbodies and wetlands as outlined in our Plan and Procedures would significantly reduce construction impacts and would further minimize effects to flood water retention capacity.

34. The SRWC also commented on the potential for impact to vernal pools, which it notes are not crossed; tree removal; the Rainbow Smelt; cultural resources; and alternatives.

35. The project does not actually cross any vernal pools and thus the only impacts would be related to potential indirect erosion and sedimentation for the duration of construction at any one place (1-3 months) and for an additional limited time during right-of-way restoration. Adherence to construction erosion and sedimentation control

measures contained in staff's Plan and Procedures should prevent or minimize sedimentation into vernal pools. The removal of trees would be minimized by using the power line right-of-way. The Rainbow Smelt, which the SRWC indicates is a Massachusetts Species of Special Concern, was not so identified by the NHESP of the Massachusetts Division of Fisheries and Wildlife. However, we recommend that Tennessee include this species in its required discussions with the NHESP.

36. The SRWC concurs with the findings of the EA relating to the need to continue analysis of cultural resources as site-specific project plans are finalized.

37. Finally the SRWC expresses its concerns that local minor route deviations may still be appropriate, but indicates that Tennessee is reluctant to modify the route we are approving. As the SRWC notes we, through our staff, must approve any such modifications, but that should not keep Tennessee from discussing such deviations and, if reasonable, bringing them to the staff's attention for review. However, we emphasize that it is our belief that the proposed route is the most environmentally appropriate route overall.

38. Tennessee indicated in its comments that the EA incorrectly identified a potable water intake and references associated with this intake as belonging to the Town of Lynnfield; and that the potable water intake actually belongs to the Town of Lynn. We acknowledge that correction, but believe that all relevant analysis related to this potable water intake is valid. Tennessee also indicated that the recommendation that Tennessee file site-specific construction plans for residences occurring within twenty-five feet of the construction work area between survey stations 39+65 and 50+22 would result in no plans, since surveys indicate that no residences in the referenced area occur within twenty-five feet of the construction work area. If surveys indicate that there are no residences meeting that criterion then no plans would be required. Additionally, Tennessee stated that the EA included a reference to an access road that has since been eliminated from its proposal. Tennessee also indicated that a tie-in and valve and pig launcher have been relocated, but were inadvertently not pointed out on its adjusted alignment sheets. These deviations reduce the wetland impact of the project.

39. Tennessee has proposed that staff's recommendation regarding the Town of Wakefield and noise generated by proposed HDD activities be changed. Tennessee's concern appears to be that the town, through this permitting process, could delay the project. We note that the recommendation does not require Tennessee to actually obtain such a permit, just to provide us with a copy of any that is issued. As we have always done, we urge the applicant to work with local and state agencies to obtain appropriate permits. However, any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities.

However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the (construction/replacement or operation) of facilities approved by this Commission.<sup>13</sup>

40. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Tennessee's application and supplements filed December 22, 2005, and February 1, 6, 13, 14, 21, and 24, March 20, May 1 and May 10, 2006, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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

### **Conclusion**

42. For the reasons discussed above, and with the conditions imposed by this order, the Commission concludes that the certificate authorization requested herein is required by the public convenience and necessity.

43. The Commission on its own motion received and made part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Tennessee pursuant to section 7(c) of the Natural Gas Act authorizing Tennessee to construct, own, and operate natural gas facilities as described and conditioned herein and as more fully described in the application.

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

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<sup>13</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (1) Tennessee's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Tennessee's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Tennessee's compliance with the environmental conditions listed in the appendix to this order.

(C) Tennessee's proposed initial rates for firm transportation service are approved.

(D) Tennessee is directed to file its negotiated rate agreement with DOMAC or a tariff sheet describing the transaction no sooner than 60 days and no later than 30 days before service commences.

(E) Tennessee must keep separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges and revenue associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

(F) Tennessee must execute a firm contract equal to the level of service and terms of service represented in the precedent agreement with DOMAC prior to commencing construction.

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

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX**

Tennessee Gas Pipeline Company  
Environmental Conditions  
Docket No. CP06-18-000

1. Tennessee shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the environmental assessment, unless modified by this Order. Tennessee must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation 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 this 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.
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, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location 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 this Order. All requests for modifications of environmental conditions of this 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 Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a ROW 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, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to 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. **At least 60 days before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Tennessee will implement the mitigation

measures required by this Order. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. 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;
  - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - d. the 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);
  - e. the company personnel (if known) and specific portion of Tennessee 's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Tennessee shall employ at least one environmental inspector. The environmental inspector (EI) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this 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 and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and



- e. responsible for maintaining status reports.
8. Tennessee shall file updated status reports prepared by the EI with the Secretary on a biweekly basis **until all construction-related activities, including restoration and initial permanent seeding, 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. the current 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;
    - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector 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);
    - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
    - d. the effectiveness of all corrective actions implemented;
    - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
    - f. copies of any correspondence received by Tennessee from other Federal, state or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
  9. Tennessee must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
  10. **Within 30 days of placing the certificated 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 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 along the ROW where compliance measures were not properly implemented, if not

previously identified in filed status reports, and the reason for noncompliance.

11. Tennessee shall, **prior to construction**, file with the Secretary a site-specific plan for the proposed horizontal directional drill crossing of State Route 128/Interstate 95 and Pond W1-P3 and Wetlands W15-W13 and W16-W12, that includes scaled drawings identifying all areas that would be disturbed by construction, as well as justifications for using work space within 50 feet of a waterbody or wetland, for review and approval in writing by the Director of OEP.
12. Tennessee shall, **prior to construction**, provide the remaining wetland and waterbodies surveys along the proposed pipeline corridor from station numbers 38+54 to 49+10 (mileposts 0.73 to 0.93) and station numbers 49+63 to 51+22 (mileposts 0.94 to 0.97) to the Secretary and receive written approval from the Director of OEP.
13. Tennessee shall, **prior to construction**, file with the Secretary a summary of its consultations with the Massachusetts Department of Environmental Protection regarding the pitch pine/scrub oak community located within the powerline right-of-way from station numbers 52+80 to 56+30 (mileposts 1.0 to 1.07) which includes any protection measures agreed to by Tennessee.
14. If underwater blasting is required, Tennessee shall use methods (such as delayed detonation and air bubble curtains) to reduce the total acoustic shockwave intensity to the greatest extent possible, based on site-specific conditions. Tennessee shall coordinate detonation plans with state biologists, conduct pre- and post-detonation monitoring, and submit fish kill reports to the pertinent state fisheries departments, if kill reports are requested by the state.
15. Tennessee shall, **prior to construction**, file any mitigation plans for the state listed species listed in Table 5 resulting from its consultations with the Massachusetts Natural Heritage and Endangered Species Program with the Secretary for review and written approval by the Director of OEP.
16. Tennessee shall, **prior to construction**, file agreement that, for residences within 25 feet of the CWA, it would cover the trench if left open when construction is not in progress.
17. Tennessee shall, **prior to construction**, file site-specific construction plans for residences occurring within 25 feet of the construction work area between station

numbers 39+65 to 50+22 (mileposts 0.75 to 0.95) with the Secretary for review and written approval by the Director of OEP. The plan should include:

1. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
    - i. the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
    - ii. the edge of the construction work area;
    - iii. the edge of the new permanent right-of-way; and
    - iv. other nearby residences, structures, roads, or waterbodies, and
  2. a description of how Tennessee will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation.
18. Tennessee shall develop and implement an environmental complaint resolution procedure. The procedure would 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 right-of-way. **Prior to construction**, Tennessee shall mail the complaint procedure to each landowner whose property would be crossed by the project. In its letter to affected landowners, Tennessee shall:
- a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
  - b. instruct the landowners that, if they are not satisfied with the response, they should call Tennessee's Hotline; the letter shall indicate how soon to expect a response; and
  - c. instruct the landowners that, if they are still not satisfied with the response from Tennessee's Hotline, they should contact the Commission's Enforcement Hotline at (1-888-889-8030).

In addition, Tennessee shall include in its biweekly status report a table that contains the following information for each problem/concern:

- d. the date of the call;

- e. the identification number from the certificated alignment sheets of the affected property;
  - f. the description of the problem/concern; and
  - g. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
19. Tennessee shall defer construction, implementation of any treatment plans or data recovery, use of facilities and staging, storage, and temporary work areas and new or to be improved access roads until:
- a. Tennessee files with the Secretary cultural resource reports, and treatment plans, as appropriate, the State Historic Preservation Office's comments, and revised unanticipated discovery plan; and
  - b. the Director of OEP reviews and approves all reports and treatment and notifies Tennessee in writing that it may proceed.

Note: For additional information see OEP's *"Guidelines for Reporting on Cultural Resource Investigations"* (December, 2002).

All material 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."**

20. Tennessee shall, **prior to construction**, file with the Secretary copies of any permit and/or variance approved by the Town of Wakefield pertaining to noise generated by its proposed HDD activities.