

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. CP04-60-000

ORDER ISSUING CERTIFICATE

(Issued January 24, 2005)

1. On January 30, 2004, Tennessee Gas Transmission Company (Tennessee) made a prior notice filing pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's blanket construction regulations in Part 157, subpart F.¹ In its filing, Tennessee proposed to construct and operate a 5.31-mile lateral line and a delivery meter in Middlesex and Essex Counties, Massachusetts. Tennessee requires the new facilities to provide 17,000 Dth/d of firm transportation to Bay State Gas Company (Bay State), a local distribution company, and 8,000 Dth/d to Wyeth Pharmaceuticals, Inc. (Wyeth).
2. Commission staff filed a protest to Tennessee's prior notice filing asserting that in order to propose incremental recourse rates for the project, Tennessee needed to file an application for a case-specific certificate of public convenience and necessity pursuant to Part 157, subpart A of the Commission's regulations.² Since the protest was not withdrawn, the Commission is processing the prior notice filing as a case-specific application for a certificate, as required by section 157.204(f) of the Commission's regulations.³ For the reasons discussed herein, the Commission will issue a certificate to Tennessee authorizing this project (Tewksbury-Andover Lateral), subject to conditions. Approval of this project is in the public interest because it will provide increased volumes of natural gas supplies to meet the stated requirements of the customers.

¹ 18 C.F.R. Part 157, subpart F, §157.201 *et seq.* (2004). Tennessee was issued a blanket construction certificate under Part 157, subpart F, in *Tennessee Gas Pipeline Co.*, 20 FERC ¶ 61,409 (1982).

² 18 C.F.R. Part 157, subpart A, §157.1, *et seq.* (2004).

³ 18 C.F.R. §157.204(f). Under this section, if a protest is withdrawn within 30 days, the project may proceed under the blanket authority contemplated in Part 157, subpart F.

Background and Proposal

3. Tennessee is a corporation organized and existing under the laws of Delaware and a natural gas company pursuant to section 1(b) of the NGA. Tennessee's mainline transmission system extends in a northeasterly direction from supply sources in the Gulf of Mexico and the Gulf states, through the Appalachian region and Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut.

4. Tennessee's proposed Tewksbury-Andover Lateral project will consist of 5.31 miles of 8-inch diameter pipeline, extending from milepost 270B-102+1.53 on its existing Concord Lateral in Middlesex County, Massachusetts, to an interconnection with Bay State's distribution system located at Wyeth's BioPharm unit facility in Andover, Essex County, Massachusetts. Tennessee states that the proposed lateral will be constructed primarily within an existing easement on New England Power Company's and Massachusetts Electric Company's right-of-way. Tennessee indicates that appurtenant facilities for in-line inspection, electric current mitigation and cathodic protection will also be installed in connection with the pipeline facilities. In addition, the project will include a meter at the point of interconnection between Tennessee and Bay State at the Wyeth facility. The metering facilities will include a 6-inch ultrasonic and a 2-inch turbine meter, as well as chromatographic, electronic gas measuring and communications equipment, along with other minor appurtenances.

5. Tennessee states that the estimated cost of construction will be \$7,683,000, including an allowance for funds used during construction (AFUDC). Bay State will reimburse Tennessee \$72,450 for the cost of the tap facilities, as provided for in Tennessee's FERC Gas Tariff. Tennessee will finance the remaining costs from funds on hand.

6. Tennessee has a precedent agreement with Bay State for 17,000 Dth/d of firm transportation under Rate Schedule FT-IL (its rate schedule for lateral line service) for an initial term of ten years. Additionally, Tennessee has a precedent agreement with Wyeth for 8,000 Dth/day of firm transportation service under Rate Schedule FT-IL for an initial term of twenty years. Tennessee proposes to charge these customers negotiated rates. Gas for Wyeth will be delivered to Bay State at the interconnection between Bay State and Tennessee at the Wyeth facilities and Bay State will deliver the gas to Wyeth. Thus, Tennessee avers that this project will not constitute a bypass of Bay State's system.

7. As noted, in its prior notice filing, Tennessee indicated that it intended to provide service under Rate Schedule FT-IL, which provides for incremental recourse rates to be calculated for service over each of Tennessee's separate laterals that qualify under the rate schedule. As explained in more detail below, Commission staff filed a protest, which was not withdrawn, asserting that incremental rate proposals were not

contemplated by the blanket construction certificate regulations in Part 157, subpart F. Since this proceeding now involves the issuance of a case-specific certificate under Part 157, subpart A, Tennessee has provided more detailed information on its rate proposal, as required for such case-specific applications.⁴ A description of that proposal follows.

8. Tennessee's Rate Schedule FT-IL was approved by the Commission in Docket Nos. RP02-17-000 and CP00-65-005 in connection with Tennessee's Stagecoach Lateral Project. The rate schedule was established for service over that lateral and over "any future incrementally-priced laterals approved by the Commission and constructed by Tennessee."⁵ Tennessee explains that the Commission declined to approve Tennessee's original proposal to charge its systemwide rates for service on the Stagecoach Lateral because doing so (1) was not consistent with the Commission's Certificate Policy Statement's⁶ requirement that existing shippers should not subsidize the cost of facilities constructed to serve one customer or discrete group of customers, (2) a separate lateral-line-only service with an incremental charge was appropriate because customers could only use the Stagecoach Lateral if they also had transportation rights on the mainline, and (3) the project would create no additional mainline capacity and customers using the lateral made no contribution to recovery of mainline costs.⁷

9. Tennessee contends that the characteristics of the proposed Tewksbury-Andover Lateral project are similar to those of the Stagecoach Lateral project. Therefore, according to Tennessee, this new lateral should also be priced on an incremental basis. For example, Tennessee explains that because the full capacity of the proposed Tewksbury-Andover Lateral is subscribed by only two customers, incremental pricing under Rate Schedule FT-IL is appropriate. Tennessee also maintains that since the

⁴ See, e.g., sections 157.6(b)(8) and 157.14(a)(18). Tennessee filed a supplement to its prior notice filing on May 28, 2004 in which it provided the information necessary for a case-specific application. That filing included, for example, Tennessee's arguments demonstrating compliance with the Commission's Certificate Policy Statement. See *infra* note 6.

⁵ *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,133 at 61,609 (2001).

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 92 FERC ¶ 61,094, *order on further clarification*, 92 FERC ¶ 61,094 (2000).

⁷ *Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,096 at 61,287 (2001).

project will have no impact on the rates of, or service for, existing customers, the lateral line customers should pay an incremental rate. Tennessee notes, however, that other customers will be able to access the proposed lateral through extended transportation service offered under Rate Schedule FT-A⁸ or interruptible service under Rate Schedule IT. Tennessee has filed *pro forma* tariff sheets and supporting documentation for recourse rates under Rate Schedule FT-IL and rates for service under Rate Schedule FT-A or Rate Schedule IT.⁹ Tennessee also filed *pro forma* tariff sheets to add the Tewksbury-Andover Lateral to Section XVIII of the General Terms and Condition of its FERC Gas Tariff, which provision describes rates zones, boundaries and laterals.

10. The proposed recourse rate of \$5.4067 per Dth under Rate Schedule FT-IL is derived from the cost of service for the lateral and the full design capacity of 25,000 Dth/day. The rate of return is that underlying Tennessee's currently effective rates and the depreciation rate is 5 percent. The rates under Rate Schedules IT and FT-A are calculated on the 100 percent load factor equivalent of the monthly reservation charge.

11. While Tennessee has submitted the negotiated rate agreements with Bay State and Wyeth with its application, the Commission will not approve those agreements here. In certificate application proceedings it has been the Commission's policy to approve the applicable recourse rates and not the negotiated rates as the initial rates for a project.¹⁰

⁸ Tennessee provides firm transportation services under its Rate Schedule FT-A. Customers receiving service under this rate schedule may, under sections 4.8 and 4.9 of the rate schedule, use receipt or delivery points not in their transportation path, as defined in section 27 of Article I of the General Terms and Conditions of Tennessee's FERC Gas tariff. Customers choosing this option must pay an additional charge for the extended service.

⁹ Fifth Revised Sheet No. 22.01, Seventh Revised Sheet No. 23F, Twentieth Revised Sheet No. 25, Third Revised Sheet No. 25A, Fourth Revised Sheet No. 367 to FERC Gas Tariff, *Pro Forma* Fifth Revised Volume No. 1.

¹⁰ See *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052 (2003).

Rather, as discussed in more detail below, prior to beginning service, the applicant must make a filing to comply with the Commission's Alternative Rate Policy Statement¹¹ which, among other things, addresses the Commission's procedures and requirements for charging negotiated rates.

12. Tennessee contends that the Tewksbury-Andover Lateral will have zero fuel and losses for transportation service on the lateral, which is consistent with the incremental lateral transportation service for Tennessee's Stagecoach Lateral.¹² Tennessee states that it proposes to add the incremental recourse reservation, commodity, authorized overrun, and fuel and loss rates to Sheet No. 23F. Finally, Tennessee proposes to add the Tewksbury-Andover Lateral to Section XVIII of the General Terms and Conditions of Tennessee's Tariff on Sheet No. 367.

Interventions

13. Notice of Tennessee's application was published in the *Federal Register* on February 17, 2004 (69 Fed. Reg. 7,468). Bay State, ProLiance Energy, LLC, National Fuel Gas Distribution Corporation, The KeySpan Delivery Companies, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (filing jointly), and Wyeth filed timely motions to intervene.¹³ Bay State also filed comments and a request for clarification with its motion to intervene as well as comments filed

¹¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *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). *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *reh'g pending*.

¹² *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,133 (2001).

¹³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a) (2004).

jointly with Wyeth on June 25, 2004 in further support of the project.¹⁴ Commission staff filed a timely protest, as did landowners, Donald and Donna Power (the Powers), Lawrence and Diane Lavalle (the Lavalles),¹⁵ and Armino and Sarah Dias (the Dias).

14. Zeybekoglu Nayman Associates, Inc., as representative of the Two S Trust, filed comments on Tennessee's proposal one day after the deadline for protests in the prior notice proceeding. The filing explains that there was a delay in the representative's receipt of the notice of Tennessee's prior notice filing because it was sent to another address of the Two S Trust and not directly to the representative. In its April 8, 2004 answer, Tennessee argues that the Two S Trust's filing should be dismissed on procedural grounds, citing *Florida Gas Transmission Company*¹⁶ for the proposition that protests to prior notice filings must be made on a timely basis in order to be considered valid. Whether the Two S Trust's filing was intended to be a protest is unclear since it was not styled as a protest. In any event, since the prior notice proceeding was converted to a case-specific proceeding based on timely protests, we will permit the Two S Trust's filing to be considered as comments in this proceeding. These comments are discussed in the Environmental Assessment (EA) prepared for this project.

15. Some of the above-referenced landowners and Mr. and Mrs. Thomas Kachoris (the Kachorises) and the J.W. South Street Realty Trust (South Street) submitted timely comments in response to the Notice of Intent to Prepare an Environmental Assessment (NOI). The Massachusetts Energy Facilities Siting Board (Mass. Siting Board) filed comments on the NOI one day after the deadline due to technical difficulties preparing the filing. Since the late filing was not so late as to delay the preparation of the EA, that document does consider the Mass. Siting Board's comments.

¹⁴ Bay State was concerned that some of Tennessee's assertions in its pleadings suggested it might go forward with the project to serve only Wyeth, thereby bypassing service Bay State already provides. However, as Tennessee's proposal has evolved, there is no longer a question of bypass because both Bay Stay and Wyeth are subscribing customers for the project. Bay State and Wyeth jointly filed comments on June 25, 2004 acknowledging that the project as proposed would avoid any bypass of Bay State.

¹⁵ The Lavalles withdrew their protest after satisfactory discussion with Tennessee regarding its easement on their property.

¹⁶ 83 FERC ¶ 61,344 (1998).

16. The East Ohio Gas Company, d/b/a Dominion East Ohio and The Peoples Natural Gas Company, d/b/a Dominion Peoples (Dominion LDCs) (filing jointly), PSEG Energy Resources and Trade LLC, Mass. Siting Board, New England Power Company and Massachusetts Electric Company (filing jointly) (New England Power and Mass. Electric), and Duke Energy Gas Transmission Corporation (Duke) filed motions to intervene out of time. Duke filed comments with its motion. Since granting the late interventions will not delay the proceeding or prejudice any party, for good cause shown, the Commission will grant the motions to intervene out of time.¹⁷

17. All of the protests, other than the Commission staff protest, relate to issues of compensation for property necessary for the project or property devaluation and environmental concerns. Some comments also raise either the compensation or devaluation issue and New England Power and Mass. Electric request that the Commission impose various conditions on Tennessee's use of their right-of-way. Bay State's and Duke's comments support Tennessee's position that its proposal should be authorized under the blanket construction provisions of the Commission's regulations. We will address all of these concerns in the discussion section of this order.

18. Tennessee filed an answer on April 8, 2004 addressing the protests filed in response to the prior notice filing. Tennessee filed another answer on August 4, 2004 addressing some of the comments received in response to the NOI. Although the Commission's Rules of Practice and Procedure prohibit the filing of answers to protests, the Commission finds good cause to waive Rule 213(a)¹⁸ and accept the answer in order ensure a complete and accurate record in a proceeding. The substance of the answers will be discussed below.

Discussion

19. The proposed facilities will be utilized to provide transportation of natural gas in interstate commerce; therefore, they are subject to section 7(c) of the NGA and to the Commission's jurisdiction.

Commission Staff Protest

20. First, we will address the Commission staff protest. As noted, Commission staff asserted that the regulations governing blanket construction certificates in Part 157, subpart F, do not contemplate a pipeline's proposing to charge incremental rates for

¹⁷ 18 C.F.R § 385.214(d) (2004)

¹⁸ 18 C.F.R. §385.213(a) (2004).

service over facilities constructed pursuant to a blanket certificate. In support of this position, Commission staff observed that under the Commission's Pricing Policy,¹⁹ projects that qualify for construction under the blanket procedures are entitled to a presumption of rolled-in treatment because the rate impact of qualifying projects on existing customers would be *de minimis*.²⁰ Therefore, Commission staff maintained, the Commission does not subject these projects to a case-specific analysis of system-wide benefits as is required for projects proposed for construction under the provisions of Part 157, subpart A.

21. On March 24, 2004, under section 4 of the NGA, Tennessee filed in Docket No. RP04-221-000 tariff sheets to establish incremental rates for the proposed Tewksbury-Andover Lateral. By letter of April 16, 2004, the Director of the Division of Tariffs and Market Development – East rejected Tennessee's tariff filing on the grounds that the filing did not comply with various regulations in Part 154 of the Commission's regulations. In particular, the Director cited section 154.207 which provides that changes to tariffs should be filed not less than 30 days nor more than 60 days before the effective date of the tariff sheets, which Tennessee had proposed as April 25, 2004. However, the in-service date for the lateral was not scheduled until the fourth quarter of 2004. Thus, the Director concluded that the section 4 filing to establish incremental rates for the lateral was premature.

22. Although Tennessee took exception to Commission staff's view in its answer to the staff protest, it nevertheless filed all the information necessary for the Commission to process its proposal on a case-specific basis, thereby allowing analysis of the proposed recourse rates as initial rates for service over the new lateral. In its answer, however, Tennessee argues that every aspect of its proposal is consistent with the definition of an eligible facility, as set forth in section 157.202, as well as with other requirements of the blanket certificate regulations. Tennessee maintains that the blanket certificate regulations do not specify what rate treatment is required for facilities constructed under blanket authority. Tennessee emphasizes that the presumption for rolled-in rate treatment for blanket facilities contained in the Commission's Pricing Policy is not the same as a requirement for that treatment.

¹⁹ *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 (1995).

²⁰ *Citing Destin Pipeline Co.*, 83 FERC ¶ 61,308 (1998) (explaining Commission's policy on rolled-in pricing of facilities constructed under a blanket certificate).

23. Further, Tennessee points to two proceedings in which lateral line facilities constructed under blanket authority were priced on an incremental basis and the rates were established in a separate section 4 filing such that no section 7 reviews of the proposed rates occurred.²¹ Tennessee asserts that in both of these cases, the Commission had previously approved in a case-specific proceeding a lateral-line rate schedule that allowed for incremental rates to be established for each new lateral even if the lateral was constructed under blanket authority. Tennessee maintains that these cases demonstrate that the pipelines need only to file tariff sheets under section 4 to establish and place into effect the incremental rate for a lateral constructed pursuant to a blanket certificate. In light of these cases, Tennessee contends it should have been permitted to construct the Tewksbury-Andover lateral under the prior notice procedures and set an incremental rate under section 4.²²

24. As Tennessee notes, there have been instances in the past where pipelines constructing lateral line facilities under blanket certificate authority established initial incremental rates for service over those facilities through separate section 4 filings.²³ However, the general principle is that *initial* rates for service over new facilities are set in section 7 proceedings. For facilities constructed under blanket authorization, the pipeline charges its existing system rates as initial rates. While there may be support for enabling pipelines to construct facilities under blanket authorization and implement rates for service over those facilities in a separate proceeding, absent a broader examination of

²¹ Citing *Texas Eastern Transmission, L.P.*, 101 FERC ¶ 61,181 (2002) (*Texas Eastern*) and *Maritimes & Northeast Pipeline, L.L.C.*, 91 FERC ¶ 62,052 (2000) (*Maritimes*). We note that Algonquin Gas Transmission, LLC also has a lateral-line rate schedule for the incremental pricing of separate lateral lines. In at least one instance a rate has been added to this schedule for a facility constructed pursuant to blanket authorization. See *Algonquin Gas Transmission Co.*, 95 FERC ¶ 61,138 (2001).

²² We note that Duke in its comments explains that it is the parent of Maritimes as well as other pipelines and that it strongly opposes Commission staff's position that the prior notice procedures cannot be used where incremental rates will be charged.

²³ It should be noted that the order approving initial rates in *Maritimes* was issued under delegated authority, with no discussion of policy. Similarly, there was no discussion of policy in the order approving Texas Eastern's section 4 filing for initial rates on its blanket lateral.

potential implications, the Commission finds it preferable to review all proposals to price new facilities on an incremental basis in case-specific proceedings. This approach will allow the Commission to analyze the proposal under the Certificate Policy Statement and determine whether the project should be priced on an incremental or rolled-in basis.

Compliance with Certificate Policy Statement

25. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.²⁴ That policy statement established 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 pipeline facilities, the Commission 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.

26. 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 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 its existing customers. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, and on landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified, after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

²⁴ *Id.*

27. As noted above, 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 its existing customers. Since Tennessee is proposing incremental rates for the Tewksbury-Andover Lateral, existing customers cannot subsidize the project. Therefore, Tennessee's proposal meets the threshold test of the Certificate Policy Statement.

28. With regard to adverse effects the project may have on existing customers, we note that no existing customer of Tennessee filed a protest alleging that it would experience any degradation of service or other adverse effect as a result of this project. Therefore, we find that there will be no adverse effects on Tennessee's existing customers. Further since the service for Bay State and Wyeth represents new load, it will not replace current service provided by any other pipeline and, therefore, the proposal will have no adverse effect on such pipelines or their captive customers.

29. The Commission next considers whether there will be adverse effects of an economic nature on landowners or the communities through which a pipeline is routed. By routing its pipeline in an existing electric utility right-of-way for 80 percent of the pipeline's 5.31-mile length, Tennessee has minimized the project's effect on landowners. The route will require only 0.7 acres as permanent right-of-way on land belonging to residents, Tennessee sited the pipeline at the edge of the utility easement farthest away from landowners, and the route will affect fewer landowners than alternative routes considered in this proceeding. In addition, both the towns of Tewksbury and Andover support this project.

30. Nevertheless, several landowners raised issues in their protests or comments contending that the pipeline's route on or near their property would result in a devaluation of their property or in their not being paid fair and reasonable compensation from Tennessee for the use of their property. The Powers contend that they have had no offers from Tennessee to compensate them for the decreased value of their property and that the pipeline should be relocated so the route will not be detrimental to Tewksbury's residents' property values. They argue that this is especially important in this instance because, in their view, the project will only provide financial gain for a private corporation and not benefit the public interest. The Dias and Kachorises make similar comments, with the Dias' contending that there is no adequate compensation for the decrease of their use and enjoyment of their home. The Two S Trust submits that compensation for the use of its 4,000 square feet of land should be increased from \$0.73 to \$2.00 per square foot.

31. Generally, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for state or federal court. Although the Commission encourages pipelines to enter into fair negotiations with landowners regarding the use of their property, it does not intervene in such negotiations when the parties cannot reach an agreement. If that occurs, the pipeline may bring an eminent domain action in the appropriate state or federal courts which will determine fair compensation.

32. South Street avers that it owns 54 acres of land on which it plans to develop 2 million square feet of office space and contends this project would create over 2,800 jobs and generate in excess of \$2.8 million in real estate and personal property taxes for the town of Andover. It explains that the pipeline's proposed route would bisect the main portion of its property and render it useless. However, as the Director of Planning for the Town of Andover indicates, South Street's development plans have not progressed to a point that would justify changing Tennessee's proposed route since South Street has never submitted formal plans for development of the site to the Town for review.

33. Based on the discussion above, we find that Tennessee's proposal for the Tewksbury-Andover Lateral is consistent with the criteria set forth in the Certificate Policy Statement. Existing customers will not subsidize the project since it is fully subscribed and incremental rates will be charged. The project will not result in a degradation of service for existing customers and will have no adverse effect on the captive customers of other pipelines, none of whom protested the project. Finally, by routing most of the pipeline over existing right-of-way, Tennessee has minimized any adverse economic effects on landowners.

34. In addition, Bay State, as a local distribution company, provides natural gas services to residential, community, and industrial customers. The additional gas supplies it will receive from Tennessee's project will help Bay State meet the need for a second and incremental gate station off of Tennessee's pipeline to serve Bay State's Lawrence Division. Tennessee states that this additional delivery point will improve operating pressures in Bay State's Lawrence service area and help Bay State to better distribute gas supplies to heating and non-heating end-use customers. Higher operating pressures will also improve reliability on Bay State's system. Further, providing service to private companies like Wyeth is in the public interest because such entities provide jobs and generate tax income for local communities.

35. For all of these reasons, we find that construction of Tennessee's proposed Tewksbury-Andover Lateral, as modified and conditioned herein, is required by the public convenience and necessity.

Rate Proposal

36. As explained above, Tennessee has proposed cost-based initial recourse rates for service on the Tewksbury-Andover Lateral under Rate Schedule FT-IL and an interruptible rate under Rate Schedule IT that is based on the 100 percent load factor of the firm rate. These rates were calculated using the rate of return underlying Tennessee's currently effective rates. The Commission finds that the initial recourse rates under Rate Schedule FT-IL are appropriate given that they are designed to recover the cost-of-service of the Tewksbury-Andover Lateral and, consistent with the Commission's Certificate Policy Statement, because there will be no rate impact on Tennessee's existing customers. Further, we find that Tennessee's proposed rates under Rate Schedule FT-A, which provides for extended service for customers on the mainline that wish to transport gas over the Tewksbury-Andover Lateral, are appropriate because they are based on the 100 percent load factor equivalent of the monthly reservation charge of the firm rate under Rate Schedule FT-IL. Tennessee should file tariff sheets to place these rates into effect no less than 30 days and no more than 60 days prior to the commencement of service over the lateral. Finally, the interruptible rate under Rate Schedule IT has been properly designed.

37. Regarding Tennessee's proposal to charge its two customers, Wyeth and Bay State, negotiated rates for service over the Tewksbury-Andover Lateral, Tennessee must make a filing consistent with the Commission's Alternative Rate Policy Statement, as revised in the Commission's Modification of Negotiated Rate Policy.²⁵ Specifically, Tennessee must either file its executed negotiated rate contracts, in conformance with the Alternative Rate Policy Statement, as modified, or file numbered tariff sheets, not less than 30 days nor more than 60 days prior to the commencement of service on the Tewksbury-Andover Lateral. If Tennessee chooses to submit tariff sheets where this option is permitted under the Alternative Rate Policy Statement, as modified, it must state for each shipper paying a negotiated rate the following information: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; (6) any formula upon which the negotiated rate is designed; and (6) a statement affirming that the negotiated rate contract does not deviate in any material aspect from the form of the service agreements in its tariff.

38. Tennessee must also disclose all considerations linked to the agreements. In addition, Tennessee is required to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues

²⁵See *supra* note 11.

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 proceedings. When Tennessee files the negotiated rates tariff sheets or contracts under section 4 of the NGA, interested parties may protest if they believe the rates are discriminatory.

Environmental Review

39. On May 7, 2004, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Tewksbury-Andover Lateral and Request for Comments on Environmental Issues (NOI). Responses to the NOI were filed by Bay State and Wyeth in support of Tennessee's application. In addition, comments were filed by the Mass. Siting Board, New England Power, South Street, the Two S Trust, the Diases, the Kachorises, and the Powers. As noted, some of the landowners filed protests and comments earlier in this proceeding raising many of the issues they raised in response to the NOI. The EA addressed geology, soils, water resources, vegetation and wildlife resources, endangered and threatened species, land use, cultural resources, reliability and safety, and alternatives as well as all substantive comments of landowners.²⁶ The following discussion addresses the landowners' concerns.

40. The Diases proposed land owned by the Town of Tewksbury as an alternative route for the pipeline that would avoid crossing their property. The Diases' alternate route was evaluated in the EA and found to have greater environmental impacts than the proposed route since the proposed route uses an existing electric power transmission right-of-way (ROW) which crosses the Diases' property. However, the pipeline would be routed at the farthest edge of that ROW, a distance of about 250 feet away from the Diases' residence. Further, the Towns of Tewksbury and Andover support the pipeline route proposed by Tennessee as the route that would affect the fewest landowners and have least environmental impacts. In addition, to minimize effects on landowners during construction, Tennessee has indicated that it would install safety fencing at all 23 locations identified in its application where residences would be located within 50 feet of the construction ROW and at any location where installation of safety fencing has been incorporated into a landowner agreement.

²⁶ The EA applies the Commission's four-factor procedure for determining the need to include nonjurisdictional facilities in the environmental review. *See Algonquin Gas Transmission Co.*, 59 FERC ¶ 61,255 (1992). The Commission affirms the EA's conclusion that it is unnecessary to perform an environmental analysis on Bay State's 1,300-foot pipeline associated with this project. In this regard, we note that the State of Massachusetts is not performing such an analysis because of the pipeline's short length and low operating pressure.

41. South Street proposed that Tennessee use a two-stage method to horizontally directional drill (HDD) on its property so that there would be fewer effects on its development plans. Tennessee apparently had discussions with South Street regarding an alternative curved route that would be less detrimental to South Street's development plans, but more expensive for Tennessee. Tennessee indicates, however, that the parties could not reach a mutually satisfactory agreement regarding this matter. The proposed two-stage HDD was reviewed by environmental staff and the EA concludes that this alternative proposal would have significantly more impacts on environmental resources than Tennessee's proposed route.²⁷

42. The Two S Trust requested that Tennessee bury the pipeline to a depth of 5 feet instead of 3 feet as it crossed its property. Although the EA concludes this was a reasonable request and recommends that a condition be imposed requiring that Tennessee comply with this request, Tennessee subsequently advised environmental staff that the proposed 30-foot-wide construction ROW across the Two S Trust's property would be insufficient to bury the pipeline to a depth of 5 feet and safely construct the pipeline and store trench spoil and would result in greater impacts in the adjacent forested wetland. Tennessee, however, has agreed to the 5 foot depth of burial within the Two S Trust's developed property between Station 203+64 and Station 207+00. Since this is an appropriate compromise to avoid unnecessary wetland impacts, recommendation No. 13 in the EA requiring a burial depth of 5 feet for the entire crossing of the property will not be included in the Environmental Conditions in the Appendix hereto.

43. The Kachorises and the Powers raised safety and security concerns regarding the presence of a natural gas pipeline in proximity to their homes. The EA explains at length the numerous safety conditions imposed on the construction and operation of natural gas pipelines. It directs interested parties to the Department of Transportation pipeline safety standards which natural gas pipelines must meet that are set forth in Parts 191 to 192 of Title 49 of the Code of Federal Regulations. Although the Department of Transportation has exclusive authority to promulgate federal safety standards for pipelines, section 157.14(a)(9)(vi) of the Commission's regulations requires that an applicant for a certificate of public convenience and necessity certify to the Commission that it will design, install, inspect, test, construct, operate, replace and maintain the proposed facility in accordance with the federal safety standards. The EA also explains that the available data on pipeline safety shows that natural gas pipelines continue to be a safe, reliable

²⁷ The EA also noted that the Town of Andover believes that South Street's alternate HDD is environmentally unsound since it would involve more acreage than Tennessee's proposed HDD and would impact environmentally sensitive areas in close proximity to the Shawsheen River and its associated wetlands.

means of energy transportation. Regarding the parties' concerns for the security of natural gas pipelines, the EA explains that the Commission, in cooperation with other federal agencies and industry trade groups, has joined in efforts to protect the energy infrastructure in response to the recent increase in the nation's security awareness.

44. New England Power and Mass. Electric own the utility corridor in which Tennessee's proposed pipeline will be constructed and urge the Commission to impose several conditions on Tennessee to assure that the pipeline's use of the transmission corridor will not unreasonably impair their ability to maintain or upgrade their respective facilities or construct additional facilities. The EA does not recommend that these conditions be imposed because, as explained earlier in this order, it is the Commission's practice to leave negotiations over easements to the parties involved and not to intervene when the parties are having difficulty resolving any issues between them. Therefore, Commission finds that the conditions under which Tennessee may utilize New England Power's and Mass. Electric's ROW are beyond the scope of the environmental review of this project. We note, however, that Tennessee has stated that it has no intention of denying New England Power and Mass. Electric unlimited access to their ROW.

45. The Mass. Siting Board submitted a number of recommendations which it requests the Commission to impose on Tennessee. Tennessee has stated that it agrees to follow all of the Mass. Siting Board's recommendations except for its request that Tennessee avoid use of pesticides and herbicides in the vicinity of surface waterbodies. Tennessee states that it will defer to the appropriate land management or state agency in accordance with section VI.D.2 of the FERC's Wetland and Waterbody Construction and Mitigation Procedures. The Commission affirms the EA's conclusion that Tennessee's position is appropriate.

46. The Commission adopts all other conclusions set forth in the EA. Further, based on the discussion in the EA, we conclude that if constructed in accordance with Tennessee's application and supplements filed on February 11, March 16 and 22, April 26, May 28, June 4, July 1, 14 and 23, August 18, and October 1, 2004, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. We note further that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁸ Tennessee

²⁸See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National*

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.

47. Additionally, Tennessee's exercise of eminent domain authority, granted under 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 right-of-way for a pipeline to transport a commodity other than natural gas.

Conclusion

48. At a hearing held on January 19, 2005, the Commission, on its own motion, received and made a part of the record in this proceeding 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 authorizing Tennessee to construct and operate the Tewksbury-Andover Lateral, as more fully described in the application and in this order.

(B) Tennessee's proposed initial recourse rates under Rate Schedule FT-IL, FT-A and IT are approved.

(C) Tennessee shall construct and place into operation the facilities authorized herein within one year from the date of this order.

(D) Tennessee shall file, not less than thirty days, nor more than sixty days, prior to its proposed effective date, tariff sheets consistent with its *pro forma tariff* sheets.

Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Tennessee shall comply with the Commission's Alternative Rates Policy Statement, as modified by the Modification of Negotiated Rate Policy, to the extent it proposes to charge its customers for this project negotiated rates, as more particularly discussed herein.

(F) The certificate is conditioned on Tennessee's compliance with the Natural Gas Act and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (b), (c) (e), and (f) of section 157.20 of the regulations.

(G) Tennessee shall have executed contracts with its customers for service prior to commencing construction.

(H) The certificate issued in paragraph (A) above is conditioned on Tennessee's compliance with the environmental conditions included in the Appendix to this order.

(I) Tennessee shall notify the Commission's environmental staff by telephone and/or facsimile of an 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.

(J) The motions to intervene out of time are granted and the answers submitted in this proceeding are accepted.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Environmental 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 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 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, 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 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 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 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 right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee shall file with the Secretary detailed photo-alignment sheets 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, 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 photo-alignment sheets. 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 route variations required herein or extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, 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 this certificate and before construction begins, Tennessee shall file an initial 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 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 ROW. **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 should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they should call Tennessee's Hotline; the letter should 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 should contact the Commission's Enforcement Hotline at (888) 889-8030.

 - 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 date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property;
 - (3) the 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.
8. Tennessee shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation 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 (see condition 6 above) 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. a full-time position, separate from all other activity inspectors;

- e. 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
 - f. responsible for maintaining status reports.
9. Tennessee shall file updated status reports prepared by the (head) environmental inspector 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. 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(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - 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.
10. 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 and other areas affected by the project are proceeding satisfactorily.
11. **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 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. Tennessee shall file Directional Drill Contingency Plans for the crossings of Carter Street, East Street, B&M Railroad track, and Wetland 3 (MP 3.9 to MP 4.2), and Wetland 1, the Shawsheen River, and U. S. Interstate 93 (MP 4.9 to MP 5.3) by directional drilling. Tennessee shall also file plans for these crossings if the directional drilling operations are unsuccessful. These shall be site-specific plans that include scaled drawings identifying all areas that would be disturbed by construction. Tennessee shall file the plans concurrent with its applications to the U.S. Army Corps of Engineers for permits to construct using these plans. The plans shall address how Tennessee:
 - a. would handle any inadvertent release of drilling mud into the waterbody, wetland, or adjacent areas, including procedures to contain inadvertent releases;
 - b. would seal the abandoned drill holes; and
 - c. clean up any inadvertent releases.

Tennessee shall file the plans with the Secretary for review and written approval by the Director of OEP **before construction.**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company

Docket No. CP04-60-000

(Issued January 24, 2005)

BROWNELL, Commissioner, dissenting in part:

The majority finds that a pipeline may not propose an incremental recourse rate for service over facilities constructed pursuant to our blanket construction certificate program set forth in Part 157, subpart F of our regulations. While I agree with issuing Tennessee a certificate to construct the Tewksbury-Andover Lateral, I do not agree with the policy decision that incremental pricing is incompatible with our blanket certificate program. This case may well represent bureaucratic zeal overwhelming good regulatory policy and basic common sense.

The blanket certificate regulations do not require a particular rate treatment nor do those regulations place any limitations on the available pricing mechanisms. In the 1995 *Pricing Policy*, we established a presumption for rolled-in pricing for blanket certificate facilities because the rate impact to existing customers is usually *de minimis*.¹ However, a presumption for rolled-in rate treatment is not the same as a prohibition of incremental pricing. In *Destin*, the protester argued that rolled-in rate treatment was inappropriate for the proposed blanket certificate facilities because it encouraged uneconomic investment, constituted discriminatory pricing, and provided an unfair competitive advantage. While denying the protest, the Commission did not decide that incremental pricing was incompatible with the blanket certificate regulations. Instead, the Commission found that the protester had not met its burden of proof.²

In fact, the Commission has previously approved incremental pricing for blanket certificate facilities: *Maritimes & Northwest Pipeline, L.L.C.*, 91 FERC ¶ 62,052 (2000), *Texas Eastern Transmission, L.P.*, 101 FERC ¶ 61,181 (2002) and *Algonquin Gas Transmission Co.*, 95 FERC ¶ 61,138 (2001) (collectively the Duke Energy Companies). In all three cases, the pipeline had a lateral line rate schedule that allowed an incremental rate to be established for each new lateral as they are constructed. Tennessee has an existing lateral line rate schedule, Rate Schedule FT-IL, which provides for incremental

¹ *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241 at 61,917 (1995) (*Pricing Policy*)

² *Destin Pipeline Company, L.L.P.*, 83 FERC ¶ 61,308 at 62,268 (1998), reh'g denied, 85 FERC ¶ 61,024 (1998).

recourse rates to be calculated for service over any future laterals constructed by Tennessee.³ In all three cases, the pipeline made a section 4 filing to establish an incremental rate for service on the lateral being constructed. Under section 4, Tennessee filed in Docket No. RP04-221-000 tariff sheets to establish incremental rates for the Tewksbury-Andover Lateral. In the section 4 filing, as it has in the past, the Commission will have adequate opportunity to review the incremental pricing proposal. Consequently, there does not appear to be any apparent distinguishing factor between this case and those cases.

Furthermore, the fact that a pipeline will incrementally price the lateral project should have no bearing on whether the pipeline has the ability to construct the lateral under its blanket construction certificate. The purpose of the blanket certificate procedures is to make the certificate process more efficient by streamlining and expediting the Commission review for certain routine facilities.⁴ It was the Commission's intention that the blanket certificate program would apply to projects which were non-controversial and relatively minor in nature and not to "those facilities which may have a major potential rate impact on ratepayers."⁵ Thus, the blanket certificate program generally excludes mainline projects. Instead, it is these specific-purpose laterals that are at the core of the program. With incremental rate treatment, the party who benefits from a particular service bears the cost of the service. Therefore, incremental rate treatment is in harmony with, not antithetical to, the purpose of the blanket certificate program. I would note that the Duke Energy Companies assert that denying the use of the Commission's blanket certificate procedures for incrementally priced projects, such as Tennessee's project, will result in considerable delay in the certificate process and have a chilling effect on the construction of lateral line facilities to serve new customers.

Finally, the Commission's 1999 *Certificate Policy Statement* expressed a preference in favor of incremental rates for major construction projects, especially where facilities like laterals may serve only one or a discrete group of customers.⁶ The Commission explained that

³ *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,133 at 61,609 (2001).

⁴ *Interstate Pipeline Certificates For Routine Transactions*, Order No. 234, FERC Stats. & Regs. Regulation Preambles ¶ 30,368, at pp. 30,217-18 (1982), 47 Fed. Reg. 24,254 (June 24, 1982).

⁵ *Id.* at ¶ 30,201.

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying Statement of Policy*, 90 FERC ¶ 61,128, and *order further clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*)

Eliminating the subsidization usually inherent in rolled-in rates recognizes that a policy of incrementally pricing facilities sends the proper price signals to the market. With a policy of incremental pricing, the market will then decide on whether a project is financially viable.⁷

Although the *Certificate Policy Statement* continued to recognize a presumption for rolled-in rate treatment for blanket facility construction, incremental pricing for such facilities is not inconsistent with the rationale to rely on market driven solutions to get infrastructure built.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner

⁷ *Id.* at 61,746.